assured to the owners and creditors of the great systems which the Government must now use under its own direction or else suffer serious embarrassment.

(Public—No. 107—65th Congress.)

(S. 3752.)

An act to provide for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes. (Federal Control Act.)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President, having in time of war taken over the possession, use, control, and operation (called herein Federal control) of certain railroads and systems of transportation (called herein carriers), is hereby authorized to agree with and to guarantee to any such carrier making operating returns to the Interstate Commerce Commission, that during the period of such Federal control it shall receive as just compensation an annual sum, payable from time to time in reasonable installments, for each year and pro rata for any fractional year of such Federal control, not exceeding a sum equivalent as nearly as may be to its average annual railway operating income for the three years ended June thirtieth, nineteen hundred and seventeen.

That any railway operating income accruing during the period of Federal control in excess of such just compensation shall remain the property of the United States. In the computation of such income, debits and credits arising from the accounts called in the monthly reports to the Interstate Commerce Commission equipment, rents and joint facility rents shall be included, but debits and credits arising from the operation of such street electric passenger railways, including railways commonly called interurbans, as are at the time of the agreement not under Federal control, shall be excluded. If any lines were acquired by, leased to, or consolidated with

such railroad or system between July first, nineteen hundred and fourteen, and December thirty-first, nineteen hundred and seventeen, both inclusive, and separate operating returns to the Interstate Commerce Commission were not made for such lines after such acquisition, lease, or consolidation, there shall (before the average is computed) be added to the total railway operating income of such railroad or system for the three years ended June thirtieth, nineteen hundred and seventeen, the total railway operating income of the lines so acquired, leased or consolidated, for the period beginning July first, nineteen hundred and fourteen, and ending on the date of such acquisition, lease, or consolidation, or on December thirty-first, nineteen hundred and seventeen, whichever is the earlier. The average annual railway operating income shall be ascertained by the Interestate Commerce Commission and certified by it to the President. Its certificate shall, for the purpose of such agreement, be taken as conclusive of the amount of such average annual railway operating income.

Every such agreement shall provide that any Federal taxes under the Act of October third, nineteen hundred and seventeen, or Acts in addition thereto or in amendment thereof, commonly called war taxes, assessed for the period of Federal control beginning January first, nineteen hundred and eighteen, or any part of such period, shall be paid by the carrier out of its own funds, or shall be charged against or deducted from the just compensation; that other taxes assessed under Federal or any other governmental authority for the period of Federal control or any part thereof either on the property used under such Federal control or on the right to operate as a carrier, or on the revenues or any part thereof derived from operation (not including, however, assessments for public improvements or taxes assessed on property under construction, and chargeable under the classification of the Interstate Commerce Commission to investment in road and equipment), shall be paid out of revenues derived

from railway operations while under Federal control; that all taxes assessed under Federal or any other governmental authority for the period prior to January first, nineteen hundred and eighteen, whenever levied or payable, shall be paid by the carrier out of its own funds, or shall be charged against or deducted from the just compensation.

Every such agreement shall also contain adequate and appropriate provisions for the maintenance, repair, renewals and depreciation of the property, for the creation of any reserves or reserve funds found necessary in connection therewith, and for such accounting and adjustments of charges and payments, both during and at the end of Federal control as may be requisite in order that the property of each carrier may be returned to it in substantially as good repair and in substantially as complete equipment as it was in at the beginning of Federal control, and also that the United States may, by deductions from the just compensations or by other proper means and charges be reimbursed for the cost of any additions, repairs, renewals, and betterments to such property not justly chargeable to the United States; in making such accounting and adjustments, due consideration shall be given to the amounts expended or reserved by each carrier for maintenance, repairs, renewals, and depreciation during the three years ended June thirtieth, nineteen hundred and seventeen, to the condition of the property at the beginning and at the end of Federal control and to any other pertinent facts and circumstances.

The President is further authorized in such agreement to make all other reasonabde provisions, not inconsistent with the provisions of this Act or of the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August twenty-ninth, nineteen hundred and sixteen, that he may deem necessary or proper for such Federal control or for the determination of

the mutual rights and obligations of the parties to the agreements arising from or out of such Federal control.

If the President shall find that the condition of any carrier was during all or a substantial portion of the period of three years, ended June thirtieth, nineteen hundred and seventeen, because of nonoperation, receivership, or where recent expenditures for additions or improvements or equipment were not fully reflected in the operating railway income of said three years or a substantial portion thereof, or because of any undeveloped or abnormal conditions, so exceptional as to make the basis of earnings hereinabove provided for plainly inequitable as a fair measure of just compensation, then the President may make with the carrier such agreement for such amount as just compensation as under the circumstances of the particular case he shall find just.

That every railroad not owned, controlled, or operated by another carrier company, and which has heretofore competed for traffic with a railroad or railroads of which the President has taken the possession, use, and control, or which connects with such railroads and is engaged as a common carrier in general transportation, shall be held and considered as within "Federal control", as herein defined, and necessary for the prosecution of the war, and shall be entitled to the benefit of all the provisions of this Act: *Provided, however,* That nothing in this paragraph shall be construed as including any street or interurban electric railway which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic, or sale of power, heat and light, or both.

The agreement shall also provide that the carrier shall accept all the terms and conditions of this act and any regulation or order made by or through the President under authority of this act or of that portion of the act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and

seventeen, and for other purposes," approved August twenty-ninth, nineteen hundred and sixteen, which authorizes the President in time of war to take possession, assume control, and utilize systems of transportion.

Sec. 2. That if no such agreement is made, or pending the execution of an agreement, the President may nevertheless pay to any carrier while under Federal control an annual amount, payable in reasonable installments, not exceeding ninety per centum of the estimated annual amount of just compensation, remitting such carrier, in case where no agreement is made, to its legal rights for any balance claimed to the remedies provided in section three hereof. Any amount thereafter found due such carrier above the amount paid shall bear interest at the rate of six per centum per annum. The acceptance of any benefits under this section shall constitute an acceptance by the carrier of all provisions of this Act and shall obligate the carrier to pay to the United States, with interest at the rate of six per centum per annum from a date or dates fixed in proceedings under section three, the amount by which the sums received under this section exceed the sum found due in such proceedings.

Sec. 3. That all claims for just compensation not adjusted (as provided in section one) shall, on the application of the president or of any carrier, be submitted to boards, each consisting of three referees to be appointed by the Interstate Commerce Commission, members of which and the official force thereof being eligible for service on such boards without additional compensation. Such boards of referees are hereby authorized to summon witnesses, require the production of records, books, correspondence, documents, memoranda, and other papers, view properties, administer oaths, and may hold hearings in Washington and elsewhere, as their duties and the convenience of the parties may require. In case of disobedience to a subpoena the board may invoke the aid of any district court of the United States in requiring the

attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, corporation, partnership, or association, issue an order requiring appearance before the board, or the production of documentary evidence if so ordered, or the giving of evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. Such cases may be heard separately or together or by classes, by such boards as the Interstate Commerce Commission in the first instance, or any board of referees to which any such cases shall be referred may determine. Said boards shall give full hearings to such carriers and to the United States; shall consider all the facts and circumstances, and shall report as soon as practicable in each case to the President the just compensation, calculated on an annual basis and otherwise in such form as to be convenient and available for the making of such agreement as is authorized in section one. The President is authorized to enter into an agreement with such carrier for just compensation upon a basis not in excess of that reported by such board, and many include therein provisions similar to those authorized under section one. Failing such agreement, either the United States or such carrier may file a petition in the Court of Claims for the purpose of determining the amount of such just compensation, and in the proceedings in said court the report of said referees shall be prima facie evidence of the amount of just compensation and of the facts therein stated. Proceedings in the Court of Claims under this section shall be given precedence and expedited in every particular way.

Sec. 4. That the just compensation that may be determined as hereinbefore provided by agreement or that may be adjudicated by the Court of Claims, shall be increased by an amount reckoned at a reasonable rate per centum to be fixed

by the President upon the cost of any additions and betterments, less retirements, and upon the cost of road extensions to the property of such carrier made by such carrier with the approval of or by order of the President while such property is under Federal control.

Sec. 5. That no carrier while under Federal control, shall without the prior approval of the President, declare or pay any dividend in excess of its regular rate of dividends during the three years ending June thirtieth, nineteen hundred and seventeen; *Provided, however,* That such carriers as have paid no regular dividends or no dividends during said period may, with the prior approval of the President, pay dividends at such rate as the President may determine.

Sec. 6. That the sum of $500,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, which, together with any funds available from any operating income of said carriers, may be used by the President as a revolving fund for the purpose of paying the expenses of the Federal control, and so far as necessary the amount of just compensation, and to provide terminals, motive power, cars, and other necessary equipment, such terminals, motive power, cars, and equipment to be used and accounted for as the President may direct and to be disposed of as Congress may hereafter by law provide.

The President may also make or order any carrier to make any additions, betterments, or road extensions, and to provide terminals, motive power, cars, and other equipment necessary or desirable for war purposes or in the public interest on or in connection with the property of any carrier. He may from said revolving fund advance to such carrier all or any part of the expense of such additions, betterments, or road extensions, and to provide terminals, motive power, cars, and other necessary equipment so ordered and constructed by such carrier or by the President, such advances to be charged against such carrier and to bear interest at such rate and be

payable on such terms as may be determined by the President, to the end that the United States may be fully reimbursed for any sums so advanced.

Any loss claimed by any carrier by reason of any such additions, betterments, or road extensions so ordered and constructed may be determined by agreement between the President and such carrier; failing such agreement the amount of such loss shall be ascertained as provided in section three hereof.

From said revolving fund the President may expend such an amount as he may deem necessary or desirable for the utilization and operations of canals, or for the purchase, construction, or utilization and operation of boats, barges, tugs, and other transporation facilities on the inland, canal, and coastwise waterways, and may in the operation and use of such facilities create or employ such agencies and enter into such contracts and agreements as he shall deem in the public interest.

Sec. 7. That for the purpose of providing funds requisite for maturing obligations or for other legal and proper expenditures, or for reorganizing railroads in receivership, carriers may, during the period of Federal control, issue such bonds, notes, equipment trust certificates, stock, and other forms of securities, secured or unsecured by mortgage, as the President may first approve as consistent with the public interest. The President may, out of the revolving fund created by this act, purchase for the United States all or any part of such securities at prices not exceeding par, and may sell such securities whenever in his judgment it is desirable at prices not less than the cost thereof. Any securities so purchased shall be held by the Secretary of the Treasury, who shall, under the direction of the President, represent the United States in all matters in connection therewith in the same manner as a private holder thereof. The President shall each each year as soon as practicable after January first, cause a

detailed report to be submitted to the Congress of all receipts and expenditures made under this section and section six during the preceding calendar year.

Sec. 8. That the President may execute any of the powers herein and heretofore granted him with relation to Federal control through such agencies as he may determine, and may fix the reasonable compensation for the performance of services in connection therewith, and may avail himself of the advice, assistance, and cooperation of the Interstate Commerce Commission and of the members and employees thereof, and may also call upon any department, commission, or board of the Government for such services as he may deem expedient. But no such official or employee of the United States shall receive any additional compensation for such services except as now permitted by law.

Sec. 9. That the provisions of the act entitled "An act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August twenty-ninth, nineteen hundred and sixteen, shall remain in force and effect except as expressly modified and restricted by this act; and the President, in addition to the powers conferred by this act, shall have and is hereby given such other and further powers necessary or appropriate to give effect to the powers herein and heretofore conferred. The provisions of this act shall also apply to any carriers to which Federal control may be hereafter extended.

Sec. 10. That carriers while under Federal control shall be subject to all laws and liabilities as common carriers, whether arising under State or Federal laws or at common law, except in so far as may be inconsistent with the provisions of this act or any other act applicable to such Federal control or with any order of the President. Actions at law or suits in equity may be brought by and against such carriers and judgments rendered as now provided by law; and

in any action at law or suit in equity against the carrier, no defense shall be made thereto upon the ground that the carrier is an instrumentality or agency of the Federal Government. Nor shall any such carrier be entitled to have transferred to a Federal court any action heretofore or hereafter instituted by or against it, which action was not so transferable prior to the Federal control of such carrier; and any action which has heretofore been so transferred because of such Federal control or of any act of Congress or official order or proclamation relating thereto shall upon motion of either party be transferred to the court in which it was originally instituted. But no process, mesne or final, shall be levied against any property under such Federal control.

That during the period of Federal control, whenever in his opinion the public interest requires, the President may initiate rates, fares, charges, classifications, regulations, and practices by filing the same with the Interstate Commerce Commission, which said rates, fares, charges, classifications, regulations and practices shall not be suspended by the commission pending final determination.

Said rates, fares, charges, classifications, regulations, and practices shall be reasonable and just and shall take effect at such time and upon such notice as he may direct, but the Interstate Commerce Commission shall, upon complaint, enter upon a hearing concerning the justness and reasonableness of so much of any order of the President as establishes or changes any rate, fare, charge, classification, regulation, or practice of any carrier under Federal control, and may consider all the facts and circumstances existing at the time of the making of the same. In determining any question concerning any such rates, fares, charges, classifications, regulations, or practices or changes therein, the Interstate Commerce Commission shall give due consideration to the fact that the transportaion systems are being operated under a unified and coordinated national control and not in competi-

tion.

After full hearing the commission may make such findings and orders as are authorized by the act to regulate commerce as amended and said findings and orders shall be enforced as provided in said act: *Provided, however,* That when the President shall find and certify to the Interstate Commerce Commission that in order to defray the expenses of Federal control and operation fairly chargeable to railway operating expenses, and also to pay railway tax accrusals other than war taxes, net rents for joint facilities and equipment, and compensation to the carriers, operating as a unit, it is necessary to increase the railway operating revenues, the Interstate Commerce Commission in determining the justness and reasonableness of any rate, fare, charge, classification, regulation, or practice shall take into consideration said finding and certificate by the President, together with such recommendations as he may make.

Sec. 11. That every person or corporation, whether carrier or shipper, or any receiver, trustee, lessee, agent, or person acting for or employed by a carrier or shipper, or other person, who shall knowingly violate or fail to observe any of the provisions of this act, or shall knowingly interfere with or impede the possession, use, operation, or control of any railroad property, railroad, or transportation system hitherto or hereafter taken over by the President, or shall knowingly violate any of the provisions of any order or regulation made in pursuance of this act, shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not more than $5,000, or, if a person, by imprisonment for not more than two years, or both. Each independent transaction constituting a violation of, or a failure to observe, any of the provisions of this act, or any order entered in pursuance hereof, shall constitute a separate offense. For the taking or conversion to his own use or the embezzlement of money or property derived from or used in connection with the possession,

use, or operation of said railroads or transportation systems, the criminal statutes of the United States, as well as the criminal statutes of the various States where applicable, shall apply to all officers, agents, and employees, engaged in said railroad and transportation service, while the same is under Federal control, to the same extent as to persons employed in the regular service of the United States. Prosecutions for violations of this act or of any order entered hereunder shall be in the district courts of the United States, under the direction of the Attorney General, in accordance with the procedure for the collection and imposing of fines and penalties now existing in said courts.

Sec. 12. That moneys and other property derived from the operation of the carriers during Federal control are hereby declared to be the property of the United States. Unless otherwise directed by the President, such moneys shall not be covered into the Treasury, but such moneys and property shall remain in the custody of the same officers, and the accounting thereof shall be in the same manner and form as before Federal control. Disbursements therefrom shall, without further appropriation, be made in the same manner as before Federal control and for such purposes as under the Interstate Commerce Commission classification of accounts in force on December twenty-seventh, nineteen hundred and seventeen, are chargeable to operating expenses or to railway tax accruals and for such other purposes in connection with Federal control as the President may direct, except that taxes under Titles One and Two of the act entitled "An Act to provide revenue to defray war expenses, and for other purposes," approved October third, nineteen hundred and seventeen, or any act in addition thereto or in amendment thereof, shall be paid by the carrier out of its own funds. If Federal control begins or ends during the tax year for which any taxes so chargeable to railway tax accruals are assessed, the taxes for such year shall be apportioned to the date of the beginning

or ending of such Federal control, and disbursements shall be made only for that portion of such taxes as is due for the part of such tax year which falls within the period of Federal control.

At such periods as the President may direct, the books shall be closed and the balance of revenues over disbursements shall be covered into the Treasury of the United States to the credit of the revolving fund created by this act. If such revenues are insufficient to meet such disbursements, the deficit shall be paid out of such revolving fund in such manner as the President may direct.

Sec. 13. That all pending cases in the courts in the United States affecting railroads or other transportation systems brought under the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended and supplemented, including the commodities clause, so called, or under the act to protect trade and commerce against unlawful restraints and monopolies, approved July second, eighteen hundred and ninety, and amendments thereto, shall proceed to final determination as soon as may be, as if the United States had not assumed control of transportation systems; but in any such case the court having jurisdiction may, upon the application of the United States, stay execution of final judgment or decree until such time as it shall deem proper.

Sec. 14. That the Federal control of railroads and transportation systems herein and heretofore provided for shall continue for and during the period of the war and for a reasonable time thereafter, which shall not exceed one year and nine months next following the date of the proclamation by the President of the exchange of ratifications of the treaty of peace; *Provided, however,* That the President may, prior to July first, nineteen hundred and eighteen, relinquish control of all or any part of any railroad or system of transportation, further Federal control of which the President

shall deem not needful or desirable; and the President may at any time during the period of Federal control agree with the owners thereof to relinquish all or any part of any railroad or system of transportation. The President may relinquish all railroads and systems of transportation under Federal control at any time he shall deem such action needful or desirable. No right to compensation shall accrue to such owners from and after the date of relinquishment for the property so relinquished.

Sec. 15. That nothing in this act shall be construed to amend, repeal, impair, or affect the existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transportation of troops, war materials, Government supplies, or the issue of stocks and bonds.

Sec. 16. That this act is expressly declared to be emergency legislation enacted to meet conditions growing out of war; and nothing herein is to be construed as expressing or prejudicing the future policy of the Federal Government concerning the ownership, control, or regulation of carriers or the method or basis of the capitalization thereof.

Approved, March 21, 1918.

By The President of the United States of America,

## A PROCLAMATION.

Authorizing the Director General of Railroads to Exercise Powers conferred on the President by Congress.

Whereas, by the proclamation dated December 26, 1917, taking over each and every system of transportation and the appurtenances thereof located wholly or in part within the boundaries of the continental United States, it was provided "that the possession, control, operation, and untilization of such transportation systems hereby by me undertaken, shall be exercised by and through William G. McAdoo, who is here-

by appointed and designated Director General of Railroads," and the said William G. McAdoo pursuant to said proclamation entered upon and has continued to discharge the duties of Director General of Railroads as provided therein; and

Whereas, since the issuance of said proclamation the Congress of the United States has passed an act entitled *An Act to Provide for the Operation of Transportation Systems while under Federal Control, for the Just Compensation of their Owners, and for other Purposes,* which act was duly approved by me on the 21st day of March, 1918, and is now in full force and effect; and in terms confers upon the President the powers specified therein and the authority to carry the same into effect; and

Whereas, it is provided in Section 8 of said act that the President may execute any of the powers therein and theretofore granted him with relation to the Federal control of systems of transportation and parts thereof, including railroads, inland waterways, etc., through such agencies as he may determine;

Now, therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the powers and authority so vested in me by said act and of all other powers me hereto enabling, do hereby authorize the said William G. McAdoo, Director General of Railroads as aforesaid, either personally or through such divisions, agencies, or persons as he may appoint, and in his own name or in the name of such divisions, agencies, or persons, or in the name of the President to agree with the carriers or any of them or with any other person in interest, upon the amount of compensation to be paid pursuant to law, and to sign, seal, and deliver in his own name or in the name of the President or in the name of the United States such agreements as may be necessary and expedient with the several carriers or other persons in interest respecting compensation, or any other matter concerning which it may be necessary or expedient to deal and

to make any and all contracts, agreements, or obligations necessary or expedient and to issue any and all orders which may in any way be found necessary and expedient in connection with the Federal control of systems of transportation, railroads, and inland waterways as fully in all respects as the President is authorized to do, and generally to do and perform all and singular all acts and things and to exercise all and singular the powers and duties which in and by the said act, or any other act in relation to the subject hereof, the President is authorized to do and perform.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the District of Columbia this 29th day of March in the year of our Lord, one thousand nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-second.

(SEAL) WOODROW WILSON.

By the President:

Robert Lansing,

Secretary of State.

---

## TRANSPORTATION ACT 1920

AN ACT To provide for the termination of Federal control of railroads and systems of transportation; to provide for the settlement of disputes between carriers and their employees; to further amend an Act entitled "An Act to regulate commerce," approved February 4, 1887, as amended, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.*

### TITLE I—Definitions

Section 1. This Act may be cited as the "Transportation Act, 1920."

Sec. 2. When used in this Act—

The term "Interstate Commerce Act" means the Act entitled "An Act to regulate commerce," approved February 4, 1887, as amended;

The term "Commerce Court Act" means the Act entitled "An Act to create a commerce court, and to amend an act entitled 'An Act to regulate commerce,' approved February 4, 1887, as heretofore amended, and for other purposes," approved June 18, 1910;

The term "Federal Control Act" means the Act entitled "An act to provide for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes," approved March 21, 1918, as amended;

The term "Federal control" means the possession, use, control, and operation of railroads and systems of transportation, taken over or assumed by the President under section 1 of the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June 30, 1917, and for other purposes," approved August 29, 1916, or under the Federal Control Act; and

The term "Commission" means the Interstate Commerce Commission.

## TITLE II—TERMINATION OF FEDERAL CONTROL.

Sec. 200. (a) Federal control shall terminate at 12:01 a. m., March 1, 1920; and the President shall then relinquish possession and control of all railroads and systems of transportation then under Federal control and cease the use and operation thereof.

* * * * * * *

Reimbursement of Deficits During Federal Control.

Sec. 204. (a) When used in this section.

The term "carrier" means a carrier by railroad which, during any part of the period of Federal control, engaged as a

common carrier in general transportation, and competed for traffic or connected, with a railroad under Federal control, and which sustained a *deficit in its railway operating income* for that portion (as a whole) of the period of Federal control during which it operated its own railroad or system of transportation; but does not include any street or interurban electric railway which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic or sale of power, heat, and light, or both; and

The term "test period" means the three years ending June 30, 1917.

(b) For the purposes of this section—

Railway operating income or any deficit therein for the period of federal control shall be computed in a manner similar to that provided in section 209 with respect to such income or deficit for the guaranty period; and

Railway operating income or any deficit therein for the test period shall be computed in the manner provided in section 1 of the Federal Control Act.

(c) As soon as practicable after March 1, 1920, the Commission shall ascertain for every carrier, for every month of the period of Federal Control during which its railroad or system of transportation was not under Federal operation, its deficit in railway operating income, if any, and its railway operating income, if any (hereinafter called "Federal control return"), and the average of its deficit in railway operating income, if any, and of its railway operating income, if any, for the three corresponding months of the test period taken together (hereinafter called the "test period return"): *Provided* That "test period return," in the case of a carrier which operated its railroad or system of transportation for at least one year during, but not for the whole of, the test period, means its railway operating income, or the deficit therein, for the corresponding month during the test period, or the average thereof for the corresponding months during

the test period taken together, during which the carrier operated its railroad or system of transportation.

(d) For every month of the period of Federal control during which the railroad or system of transportation of the carrier was not under Federal operation, the Commission shall then ascertain (1) the difference between its Federal control return, if a deficit, and its test period return, if a smaller deficit, or (2) *the difference between its test period return, if an income, and its Federal control return, if a smaller income, or* (3) the sum of its Federal control return if a deficit, plus its test period return, if an income. *The sum of such amounts shall be credited to the carrier.*

(e) For every such month the Commission shall then ascertain (1) *the difference between the carrier's Federal control return, if an income, and its test period return, if a smaller income,* or (2) the difference between its test period return, if a deficit, and its Federal control return, if a smaller deficit, or (3) the sum of its Federal control return, if an income, plus its test period return, if a deficit. The sum of such amounts shall be credited to the United States.

(f) If the sum of the amounts so credited to the carrier under subdivision (d) exceeds the sum of the amounts so credited to the United States under subdivision (e), *the difference shall be payable to the carrier.* In the case of a carrier which operated its railroad or system of transportation for less than a year during, or for none of, the test period, the foregoing computation shall not be used, but there shall be payable to such carrier its deficit in railway operating income for that portion (as a whole) of the period of Federal control during which it operated its own railroad system of transportation.

(g) The Commission shall promptly certify to the Secretary of the Treasury the several amounts payable to carriers under paragraph (f). The Secretary of the Treasury is hereby authorized and directed thereupon to draw warrants

in favor of each such carrier upon the Treasury of the United States for the amount shown in such certificate as payable thereto. An amount sufficient to pay such warrants is hereby appropriated out of any money in the Treasury not otherwise appropriated.

* * * * * *

Guaranty to Carriers After Termination of Federal Control.

Sec. 209. (a) When used in this section—

The term "carrier" means (1) a carrier by railroad or partly by railroad and partly by water, whose railroad or system of transportation is under Federal control at the time Federal control terminates, or which has heretofore engaged as a common carrier in general transportation and competed for traffic, or connected, with a railroad at any time under Federal control; and (2) a sleeping car company whose system of transportation is under Federal control at the time Federal control terminates; but does not include a street or interurban electric railway not under Federal control at the time Federal control terminates, which has as its principal source of operating revenue urban, suburban or interurban passenger traffic or sale of power, heat, and light, or both;

The term "guaranty period" means the six months beginning March 1, 1920.

The term "test period" means the three years ending June 30, 1917; and

The term "railway operating income" and other references to accounts of carriers by railroad shall, in the case of a sleeping car company, be construed as indicating the appropriate corresponding accounts in the accounting system prescribed by the Commission.

(b) This section shall not be applicable to any carrier which does not on or before March 15, 1920, file with the Commission a written statement that it accepts all the provisions of this section.

(c) The United States hereby guarantees—

(1) With respect to any carrier with which a contract (exclusive of so-called cooperative contracts or waivers) has been made fixing the amount of just compensation under the Federal Control Act, that the railway operating income of such carrier for the guaranty period as a whole shall not be less than one-half the amount named in such contract as annual compensation, or, where the contract fixed a lump sum as compensation for the whole period of Federal operation, that the railway operating income of such carrier for the guaranty period as a whole shall not be less than an amount which shall bear the same proportion to the lump sum so fixed as six months bears to the number of months during which such carrier was under Federal operation, including in both cases the increases in such compensation provided for in seciton 4 of the Federal Control Act;

(2) With respect to any carrier entitled to just compensation under the Federal Control Act, with which such a contract has not been made, that the railway operating income of such carrier for the guaranty period as a whole shall not be less than one-half of the annual amount estimated by the President as just compensation for such carrier under the Federal Control Act, including the increases in such compensation provided for in section 4 of the Federal Control Act. If any such carrier does not accept the President's estimate respecting its just compensation, and if in proceedings under section 3 of the Federal Control Act it is determined that a larger or smaller annual amount is due as just compensation, the guaranty under this paragraph shall be increased or decreased accordingly;

(3) With respect to any carrier, whether or not entitled to just compensation under the Federal Control Act, with which such a contract has not been made, and for which no estimate of just compensation is made by the President, and which for the test period as a whole sustained a deficit in railway operating income, the guaranty shall be a sum equal

to (a) the amount by which any deficit in its railway operating income for the guaranty period as a whole exceeds one-half of its average annual deficit in railway operating income for the test period, plus (b) an amount equal to one-half the annual sum fixed by the President under section 4 of the Federal Control Act;

(4) With respect to any carrier not entitled to just compensation under the Federal Control Act, which for the test period as a whole had an average annual railway operating income, that the railway operating income of such carrier for the guaranty period as whole shall not be less than one-half the average annual railway operating income of such carrier during the test period.

(d) If for the guaranty period as a whole the railway operating income of any carrier entitled to a guaranty under paragraph (1), (2), or (4) of subdivision (c) is in excess of the minimum railway operating income guaranteed in such paragraph, such carrier shall forthwith pay the amount of such excess into the Treasury of the United States. If for the guaranty period as a whole the railway operating income of any carrier entitled to a guaranty under paragraph (3) of subdivision (c) is in excess of one-half of the annual sum fixed by the President with respect to such carrier under section 4 of the Federal Control Act, such carrier shall forthwith pay the amount of such excess into the Treasury of the United States. The amounts so paid into the Treasury of the United States shall be added to the funds made available under section 202 for the purposes indicated in such section. Notwithstanding the provisions of this subdivision, any carrier may retain out of any such excess any amount necessary to enable it to pay its fixed charges accruing during the guaranty period.

(e) For the purposes of this section railway operating income, or any deficit therein, for the test period shall be computed in the manner provided for in section 1 of the Fed-

eral Control Act.

(f) In computing railway operating income, or any deficit therein, for the guaranty period for the purposes of this section—

(1) Debits and credits arising from the accounts, called in the monthly reports to the Commission, equipment, rents and joint facility rents, shall be included, but debits and credits arising from the operation of such street electric passenger railways, including railways commonly called interurbans, as are not under Federal control at the time of termination thereof, shall be excluded;

(2) Proper adjustments shall be made (a) in case of any lines which were, during any portion of the period of Federal control, a part of the railroad or system of transportation of the carrier, and whose railway operating income was included in such income of the carrier for the test period, do not continue to be a part of such railroad or system of transportation during the entire guaranty period, and (b) in case of any lines acquired by, leased to, or consolidated with, the railroad or system of transportation of the carrier at any time since the end of the test period and prior to the expiration of the guaranty period, for which separate operating returns to the Commission are not made in respect to the entire portion of the guaranty period;

(3) There shall not be included in operating expenses, for maintenance of way and structure, or for maintenance of equipment, more than an amount fixed by the Commission. In fixing such amount the Commission shall so far as practicable apply the rule set forth in the proviso in paragraph (a) of section 5 of the "standard contract" between the United States and the carriers (whether or not such contract has been entered into with the carrier whose railway operating income is being computed);

(4) There shall not be included any taxes paid under Title I or II of the Revenue Act of 1917, or such portion of the

taxes paid under Title II or III of the Revenue Act of 1918 as by the terms of such Act are to be treated as levied by an Act in amendment of Title I or II of the Revenue Act of 1917; and

(5) The Commission shall require the elimination and restatement of the operating expenses and revenues (other than for maintenance of way and structures, or maintenance of equipment) for the guaranty period, to the extent necessary to correct and exclude any disproportionate or unreasonable charge to such expenses or revenues for such period, or any charge to such expenses or revenues for such period which under a proper system of accounting is attributable to another period.

(g) The Commission shall, as soon as practicable after the expiration of the guaranty period, ascertain and certify to the Secretary of the Treasury the several amounts necessary to make good the foregoing guaranty to each carrier. The Secretary of the Treasury is hereby authorized and directed thereupon to draw warrants in favor of each such carrier upon the Treasury of the United States, for the amount shown in such certificate as necessary to make good such guaranty. An amount sufficient to pay such warrants is hereby appropriated out of any money in the Treasury not otherwise appropriated.

(h) Upon application of any carrier to the Commission, asking that during the guaranty period there may be advanced to it from time to time such sums, not in excess of the estimated amount necessary to make good the guaranty, as are necessary to enable it to meet its fixed charges and operating expenses, the Commission may certify to the Secretary of the Treasury the amount of, and times at which, such advances, if any, shall be made. The Secretary of the Treasury, on receipt of such certificate, is authorized and directed to make the advances in the amounts and at the times specified in the certificate, upon the execution by the

carrier of a contract, secured in such manner as the Secretary may determine, that upon final determination of the amount of the guaranty provided for by this section such carrier will repay to the United States any amounts which it has received from such advances in excess of the guaranty, with interest at the rate of 6 per centum per annum from the time such excess was paid. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated a sum sufficient to enable the Secretary of the Treasury to make the advances referred to in this subdivision.

(i) If the American Railway Express Company shall, on or before March 15, 1920, file with the Commission a written statement that it accepts all the provisions of this subdivision, the contract of June 26, 1918, between such company and the Director General of Railroads, as amended and continued by agreement dated November 21, 1918, shall remain in full force and effect during the guaranty period in so far as the same constitutes a guaranty on the part of the United States to such company against a deficit in operating income.

In computing operating income, and any deficit therein, for the guaranty period for the purposes of this subdivision, the Commission shall require the elimination and restatement of the operating expenses and revenues for the guaranty period, to the extent necessary to correct and exclude any disproportionate or unreasonable charge to such expenses or revenues for such period, or any charge to such expenses or revenues for such period which under a proper system of accounting is attributable to another period, and to exclude from the operating expenses so much of the charge for payment for express privileges to carriers on whose lines the express traffic is carried as is in excess of 50.25 per centum of gross express revenue.

For the guaranty period the American Railway Express Company shall pay to every carrier which accepts the provi-

sions of this section, as provided in subdivision (b), hereof, 50.25 per centum of the gross revenue earned on the transportation of all its express traffic on the carrier's lines, and every such carrier shall accept from the American Railway Express Company such percentage of the gross revenue as its compensation. In arriving at the gross revenue on through or joint express traffic, the method of dividing the revenue between the carriers shall be that agreed upon between the carriers and such express company and approved by the Commission.

If for the guaranty period as a whole the American Railway Express Company does not have a deficit in operating income, it shall forthwith pay the amount of its operating income for such period into the Treasury of the United States. The amount so paid shall be added to the funds made available under section 202 for the purposes indicated in such section.

The Commission shall, as soon as practiable after the expiration of the guaranty period, certify to the Secretary of the Treasury the amount necessary to make good the foregoing guaranty to the American Railway Express Company. The Secretary of the Treasury is hereby authorized and directed thereupon to draw warrants in favor of such company upon the Treasury of the United States for the amount shown in such certificate as necessary to make good such guaranty. An amount sufficient to pay such warrants is hereby appropriated out of any money in the Treasury not otherwise appropriated.

Upon application of the American Railway Express Company to the Commission, asking that during the guaranty period there may be advanced to it from time to time such sums, not in excess of the estimated amount necessary to make good the guaranty, as are necessary to enable it to meet its operating expenses, the Commission may certify to the Secretary of the Treasury the amount of, and times at which,

such advances, if any, shall be made. The Secretary of the Treasury, on receipt of such certificate, is authorized and directed to make the advances in the amounts and at the times specified in the certificate, upon the execution by such company of a contract, secured in such manner as the Secretary may determine, that upon final determination of the amount of the guaranty provided for by this subdivision such company will repay to the United States any amounts which it has received from such advances in excess of the guaranty, with interest at the rate of 6 per centum per annum from the time such excess was paid. There is hereby appropriated out of any money in the Treasury not otherwise appropriated a sum sufficient to enable the Secretary of the Treasury to make the advances referred to in this subdivision.

* * * * *

Sec. 212. (Added February 26, 1921.) (U. S. Code, Title 49, Sec. 79.) (a) In making certifications under section 204 or section 209, the Commission, if not at the time able finally to determine the whole amount due under such section to a carrier or the American Railway Express Company, may make its certificate for any amount definitely ascertained by it to be due, and may thereafter in the same manner make further certificates, until the whole amount due has been certified. The authority of and direction to the Secretary of the Treasury under such sections to draw warrants is hereby made applicable to each such certificate. Warrants drawn pursuant to this section, whether in partial payment or in final payment, shall be paid: (1) If for payment in respect to reimbursement of a carrier for a deficit during the period of Federal control, out of the appropriation made by section 204; (2) if for payment in respect to the guaranty to a carrier other than the American Railway Express Company, out of the appropriation made by subdivision (g) of section 209; and (3) if for payment in respect to the guaranty to the American Railway Express Company, out of the appro-

priation made by the fifth paragraph of subdivision (i) of section 209.

(b) In ascertaining the several amounts payable under either of such sections, the Commission is authorized, in the case of deferred debits and credits which can not at the time be definitely determined, to make, whenever in its judgment practicable, a reasonable estimate of the net effect of any such items, and, when agreed to by the carrier or express company, to use such estimate as a definitely ascertained amount in certifying amounts payable under either of such sections, and such estimates so agreed to shall be prima facie but not conclusive evidence of their correctness in amount in final settlement.

---

## LEGISLATIVE ACTS AND HISTORY LEADING UP TO AND SURROUNDING PASSAGE OF TRANSPORTATION ACT, 1920.

At a Session of the House convened Nov. 8, 1919, (Vol. 58, Congressional Record, Part 8, page 8141) under clause 3 of Rule XXII, Mr. Esch introduced a bill to provide for termination of Federal Control of Railroads, etc. (HR 10453) (Vol. 58, part 8, page 8178).

HR 10453 was reported without amendment accompanied by a report (No. 456). The bill and report were referred to the Committee of the Whole House. (Id. 8265).

At a session convened Nov. 11, 1919, (Id. 8308) the House resolved itself into the Committee of the Whole House and took up HR 10453. (Id. 8309).

In House Record, Nov. 11, 1919, (Vol. 58, Part 8, p. 8314), Mr. Esch said in part:

> "There is also contained in title 2 a provision as to guaranty. The guaranty provided in this bill is practically the standard return of the test period provided for in the Federal control act, but we try to differen-

tiate the guaranty of six months provided for in the bill in order that it may be fair to the Government. Under the standard return or rental or compensation provided for in the Federal Control Act—I do not care what term you use, as they are used interchangeably—the Government pays the railroads under Federal control annually the average railway operating income for the three years which ended on the 30th of June, 1917."

In House Record, Nov. 11, 1919, (Vol. 58, Part 8, pp. 8330-1-2), Mr. Barkley said in part:

"There are three ways by which we undertake in this bill for the Government to carry out its moral obligation, because our legal obligation ends when we turn the roads back in as good physical condition as they were when they were taken over; but in order that the Government may not be charged with having neglected even its moral obligations to these roads we provide three ways by which this period may be cared for while regular processes of the law are being put into operation to readjust rates and expenditures according to the needs of the roads. In the first place, we provide that the standard return which we have been paying the roads during the last two years shall be continued to them for a period of six months after the Government control ceases, and that a test period of three years ending June 30, 1917, and the corresponding six months of each one of those years is to be taken as an average, and that average is to be applied to the first six months after the roads are turned back to their owners. Of course, that is purely an arbitrary figure that the committee has adopted, and it can not be otherwise than an arbitrary figure. Some standard must be set up. If the Government is to guarantee these roads any particular returns during the transition period, as we call it, there must necessarily be an arbitrary figure, and we have taken the figure

which was in the Federal Control Act covering the compensation of the roads by the Government during the period of Federal control. I think that is a fair figure, although it is arbitrary, if there is to be any guarantee of the return.

* * * *

"My understanding is that when the Government took over the roads they took over a lot more than they intended to. They sent a blank order that was served on all the roads from a list furnished by the Interstate Commerce Commission. The result was that they took over about seventeen hundred little roads that they did not need, and they turned them back just prior to the 1st of July. Now, those were largely made up of short-line roads. They have insistently contended, and they have with a good deal of force contended, although they were taken over and were turned back almost immediately, that the operation of Federal control over the big roads was to their disadvantage in this respect, that they have been compelled to pay the same rate of wages to their employees as the wages fixed by the Federal Government on the roads under Federal control. And the reason they were compelled to do that was because they had to meet the scale of wages paid on the other roads or lose their employees. And there is a great deal of force in that contention. They also claim that traffic has been diverted from these smaller roads by reason of the Government desiring to send freight over the most direct routes, and in many cases freight has been diverted from the small to the trunk-line roads, and their earnings have thereby been cut down. We provide in this bill that the guarantee shall apply to the roads thus situated, just as it has to the roads that were operated by the Government during the period of Federal control."

In House Record, Nov. 11, 1919, (Vol. 58, Part 8, pp. 8342-3), Mr. Merritt said in part:

"The conditions are that these roads, not by their own desire but by the exigency of war and by the operation of law, were taken over by the United States and have been run by the United States for about two years. I do not say this by way of criticism, but the fact is that the operation of the railroads by the United States has produced a great deficit. There is a continuing deficit today. The personnel of the roads has been disturbed. The property of the roads, in the shape of cars, is all over the United States, and it will take a large amount of time and a great amount of expense for each road to get its property together, to get its personnel together, and to go on running as a separate entity.

"That is the reason why the committee has allowed this period of six months under the present guaranty, so that the roads may get new rates before the commission, and get their business started under these new rates, so when the guaranty ends they may be on their own feet and may go on in a self-supporting way.

* * * *

"The short line roads need our care and the bill aids them much, but the great roads on which the great transportation system of this country depends need our attention most; and I hope when this bill is passed it will be passed just as it is, and you gentlemen will feel and know that you have done to this country a great service, and have passed a great constructive piece of legislation, not primarily for the benefit of the roads but for all the people of the United States."

In House Record, Nov. 11, 1919, (Vol. 58, Part 8, p.8355), Mr. Dewalt said in part:

"Mr. Chairman and gentlemen, it undoubtedly sounds like a truism to say that the bill now under considera-

tion is perhaps one of the most important that this Congress will have in contemplation of passage. The importance of the bill arises from various circumstances. When the Government took under its control the transportation systems of this country, it was a matter of urgent necessity, and even then it was a a matter of doubtful expediency, so far as profit was concerned, and the result has shown that instead of being profitable, it was a dead loss to the Government.

* * * *

"But there are certain outstanding features in the bill which in my mind are the pivotal things in it—those which should command, and I think will command, the most earnest attention of the House sitting in the Committee of the Whole.

"Now, what are those outstanding features? First, we establish in this bill what is called a guaranty fund. What do we mean by a guaranty fund, and why should there be a guaranty? Anyone who knows anything about the situation, although he may perhaps be blind to the present emergency and necessity, if he has read and studied and observed with an impartial mind, must come to the conclusion that the transportation systems of the country, if they be returned on the 1st day of January next, are bound of necessity to require help. That arises from the fact that their organization has been disturbed; their transportation system has been diverted; short lines have been mingled with trunk lines; traffic has been diverted from one system of short lines to another, occasioned by the necessities of the Government during the war period; the official forces of the various railroad companies have been changed from time to time; superintendents of this or that division have been relegated to a different portion of the country, or perhaps to a different portion of the system itself—and all this requires

reorganization. We know, too, that great betterments and improvements have been made from time to time at the behest and dictates of the Government, occasioned by the war necessity, and thus has entailed a large amount of expense upon the railroad companies themselves. And therefore it becomes absolutely necessary, unless there be an immediate change of the rate system —enlarging the rates, increasing them—that these railroads shall have something to depend upon during a period perhaps, as we stated, for at least six months after the termination of Federal control. "Therefore we have established in this bill what we call a guaranty fund. Now, what is the guaranty fund? It provides that for a period of six months after the termination of Federal control there shall be paid to the various railroad companies, if they desire to avail themselves of it, the standard return as established during the test period, which time, however, expires on June 30, 1917, being the years during which the test period, as we call it, is to be formed. Now, the test period consists of three periods of six months, which are the corresponding six months severally mentioned, in the time during which the guaranty is to be sought or obtained by the various railroad companies."

In House Record, Nov. 12, 1919, (Vol. 58, Part 8, p. 8395), Mr. Sims said in part:

"Mr. Chairman, I rise in opposition to the amendment. Gentlemen, there is no use now in using language that misleads or deceives anybody or is likely to do it. Now, let us look the question fairly and squarely in the face. When we use the word 'deficits' in ordinary use, it means a deficit in expenses of operation; that is, that the railroad has not paid its way. Now, the meaning of deficit referred to here is that the Government lacked that much of having made operating expenses and the rental due

the roads. Now, last year my recollection is that the net earnings of the roads that could have been used in payment of dividends were as large or larger under war control than they were prior thereto.

"But Congress authorized the making of an extravagant contract of the rental, and did it purposely. We gave them a rental equal to the average net earnings for the three best years the roads ever had since railroading began in the United States. Now, do you suppose, if we had not taken them over, they could have made such a return under war conditions? I do not think so. The rental was severely criticized on this side and on the Republican side of the House. It was severely criticized in the Senate as being extravagant. But, as I said, we had to take the railroads over. The very necessity of operating them in a way to win the war made it necessary to take them over. It will be some time after the war is over before ordinary conditions will return which have been disturbed by reason of war operations. And the deficit was not a deficit at all in the ordinary sense. We lost on our rental contracts. That is all there is of it. Talking about the deficit in the first year means that we did not make the rent contract in addition to expenses of operation."

In House Record, Nov. 13, 1919, (Vol. 58, Part 8, pp. 8454-5), Mr. Connolly said in part:

"Gentlemen may say that the Government guaranteed the income during Government control. That is true only in a sense. The President took over the roads under the act of 1916. After they had been taken over it was necessary that some rate of rental be fixed for their use. The President had deprived the owners of possession and assumed it himself. The average earnings for the years 1915, 1916, and 1917 was fixed because it was contended that these years being the three

consecutive preceding years afforded the best guide as to what the roads would probably earn from January 1, 1918. However, it is quite another thing to continue the guaranty after the roads have been released. It is one thing to take property under a war power and to, at least theoretically, exclude the owners from control, and for the use of such property to pay liberal rent, and quite another thing to guarantee the same rent after the owners have been restored to possession."

In House Record, Nov. 13, 1919, (Vol. 58, Part 8, p. 8476), Mr. Welty said in part:

"The bill provides a guaranty of the income they received for the three years ending June 30, 1917, averaging for the eastern district, consisting of 37 railroads, 11.48 per cent; for the southern district, consisting of 20 railroads, 12.37 per cent; while for the western district, consisting of 29 railroads, 9.96 per cent."

In House Record, Nov. 13, 1919, (Vol. 58, Part 9, p. 9159), Mr. Keller said in part:

"Section 207 provides for the guaranty to the carriers after the termination of Federal control. Under this section the United States guarantees the operating income of the railways for a period of six months after the termination of Federal control, such income to be equivalent to the average operating income of each railroad during the three-year period ending June 30, 1917, or, in other words, equal to their operating income during the three most prosperous years in railroad history."

In House Record, Nov. 17, 1919, (Vol. 58, Part 9, p. 9189), Mr. Box said in part:

"It guarantees the 'standard income' of the railways for a period of six months after they are returned to the owners. The 'standard income' is the average return received by the railroads during the three years just preceding our entry into the war—the best three-year

period for them in their history."

In House Record, Nov. 17, 1919, (Vol. 58, Part 9, p. 9209), Mr. Griffin said in part:

"These guarantees are the most objectionable features of the bill:

"First, there is the guarantee of income to railroads for six months following the termination of Federal control, based on their income for a test period of three years ending June 30, 1917, a period which was the best in their history. *Upon what theory such a guaranty is expected or granted is difficult to discern.*"

In House Record, Nov. 17, 1919, (Vol. 58, Part 9, p. 9211), Mr. Welling said in part:

"I want to deal fairly with the railroads. I am quite willing that the Government shall say to them, 'We are now starting you out in business for yourself. We will guarantee to give you your standard return for the first six months after you begin business.' That will cost this country at least $150,000,000. The bill gives that as a matter of justice to provide for the period of reorganization and readjustment, * * *"

*HR 10453, known as the Esch-Cummins bill, passed the House on November 17, 1919. (See Vol. 58, Parts 1 to 9, pp. 8691-8692, Congressional Record, 66th Congress).*

In the Congressional Record, 66th Congress, Vol. 59, Part 1, p. 884, is reported:

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill (HR 10453) to provide for the termination of Federal control of railroads and systems of transportation; to provide for the settlement of disputes between carriers and their employees; to further amend an act entitled "An Act to regulate commerce," approved February 4, 1887, as amended, and for other purposes, which had been reported from the Committee on Interstate and Foreign

Commerce with an amendment, to strike out all after the enacting clause and insert a substitute.

Mr. Cummins: "Now Mr. President, I ask unanimous consent that in lieu of the matter proposed to be inserted in the House bill, H. R. 10453, there shall be inserted the text of the Senate bill, S. 3288, as amended up to the present time, and that reservations concerning amendments can be made in the Senate upon House bill 10453 in the same way and to the same extent as though Senate bill 3288 had continued on its way to final passage."

*December 19, 1919*
*Senator Gay, of*
*Louisiana.*

Senator Gay (Id., 905-908): "Mr. President, it is with some hesitation that I venture upon a subject which I know to be most difficult and at which I do not claim to be an expert. The railroad problem is the most complicated and the most difficult of all domestic problems now presented for solution. Sometimes I feel that we are bewildered more than we are helped by the advice and the statistics of experts, and I have endeavored to study, in as simple and effective way as I could, some of the salient features of the railroad situation, and particularly certain aspects of it that are of special interest to the people of my State. I have ascertained some facts that have been helpful and interesting to me, and I submit them in the hope that they may be beneficial to some of my colleagues.

* * * *

"On December 26, 1917, the President of the United States, acting under authority granted by Congress, issued a proclamation whereby he assumed possession and control of the railroads of this country as of December 28, 1917. A Director General of Railroads was ap-

pointed, who began to operate the railroads as instruments of war.

"What was the financial arrangement made between the railroads and the Government? The Federal-control act of March 21, 1918, provided that the owners of the railroad properties should receive, as just compensation for the use of the properties, an annual sum equal to the annual net railway operating income for the three years prior to Federal control—1915, 1916, and 1917. Otherwise stated, the Government agreed to pay the railroads as rental for the use of their properties an annual sum equal to their annual net earnings, if we may employ that expression, prior to Federal control. For the railroads under Federal control that sum is approximately $75,000,000 per month, which figure represents not only the monthly rental which the Government is now paying to the railroads for the use of their properties, but also the average net earnings prior to Federal control. Railroad earnings now go to the Government. If the net railway operating income at the present time were in the neighborhood of $75,000,000 monthly, it would mean about an even break for the Government; in other words, the earnings would equal the rental that is paid. If the net railway operating income should drop to say $50,000,000 per month, it would mean a loss to the Government of $25,000,000 per month. It would also mean that if the railroads were returned to their owners, they would find their earning power, other things being equal, less by $25,000,000 than it was when the Government assumed possession and control of their properties. * * *"

Mr. Gay. "The Senator (Senator LaFollette) is correct. As I say, I do not contend that the rental paid is just what it should be, but I can not say that the railroad earnings for the first three years of the war were

abnormally large.

"The interests involved are so numerous and so complex and the difficulties are so great that it is well-nigh impossible to prescribe by legislation fiat what would be reasonable and proper earnings for the railroads. If the problem can not be left to the good judgment of an expert and impartial tribunal, then I confess I see no other solution. The House bill proposes to leave this to the discretion of the commission, as heretofore. I submit that this is a sane and satisfactory solution of a most difficult problem.

*The Short Line Railroad Problem.*

"In a very real sense it may be said that the so-called 'weak' railroads constitute the crux of the railroad problem as it exists today. If all the railroads in the United States were able to make a reasonable profit from their operation under existing wages and existing prices, there would be no railroad problem to solve. But the truth is that even before the war a huge percentage of the country's railways operated without a profit. I have already shown that in 1916 which was a favorable year, over one-third of the total outstanding stock paid no dividends whatever. There is one proposition that I have not heard contradicted, and which seems to me to be indisputable, and that is this: A poor, weak, dilapidated railroad, without adequate revenues, without suitable equipment, and without credit is unable properly to function as a public servant. The public is entitled to demand of its transportation agencies reasonable and adequate service; but if the public denies to the railroads a decent livelihood it must be content with inadequate service.

"Weak railroads are of two classes or types: First, the larger railroads, with good earning capacity, which have been financially wrecked by wanton corruption

and criminal management. For these I hold no brief. One has only to read the reports of the Interstate Commerce Commission to see to what extent the public trust has been betrayed by certain men for their private gain. No one who has studied the New Haven fiasco and the Rock Island crime can fail to see the need of adequate control over security issues and of strict regulation of the practices of common carriers. But I do not desire to speak at length of these railroads. Their story is told eloquently enough by their own misdeeds. I desire to speak of the other type of weak railroad, the one which is honestly constructed, economically and efficiently managed, but which is unable, because of conditions over which it has no control, to maintain its credit on the level which is demanded in the public interest.

"One of the principal industries in the South, Mr. President, is the lumber industry. It is difficult to exaggerate the importance of that industry, either to the people of the South or to the railroads of the South. Its importance may be gauged by the fact that in a recent case before the Interstate Commerce Commission it was shown as I am told, that an increase of but 1 per cent per 100 pounds on lumber from the producing regions of the South to the Ohio River crossings would increase enormously the earnings of nearly all railroads in southern classification territory. With the single exception of products of mines, lumber and its products constitute the most important tonnage, from a revenue standpoint, of the railroads of this country.

"It is a well-known fact that only a few years after the development of the southern lumber industry the forests near the principal railroad routes were exhausted. It became necessary to project short-line railroads, sometimes called 'tap lines,' into the very heart of the

pine forests. Courageous men undertook this task, knowing all the while that the railroads so constructed would have to rely almost wholly on the lumber tonnage. As the timber was cleared away the roads found it necessary to build deeper and deeper into forests, increasing the cost of operation. In some instances the cleared areas were converted into farm lands, the products thereof contributing to the inadequate tonnage of the carrier.

"Throughout the South, Mr. President, there are numerous railroads of this character. They represent an aggregate investment of millions upon millions of dollars, they employ thousands of men, and countless towns and villages depend upon them exclusively for transportation service. In the vast majority of cases these railroads are financially weak. They are literally struggling for existence as the forests upon which they depend for freight tonnage gradually disappear.

"Almost without exception these small lines of railroad connect with strong trunk lines, such as the Illinois Central, the Louisville & Nashville, and the Southern. Joint through rates on lumber are published from the points of origin on the short lines to Chicago and other markets. The joint through rate is divided between the trunk line and the tap line on a basis agreed upon between them. As a matter of fact, however, the tap line is compelled to take whatever allowance the trunk line gives it, and this allowance in altogether too many instances is wholly insufficient and inadequate. To illustrate, the through rate on lumber from Louisiana and Mississippi mill points to Chicago is approximately 30 cents per 100 pounds. The tap line hauls the lumber from the forest to the junction point with the trunk line and for this service receives in many instances the meager allowance of 2 cents per 100 pounds. The trunk

line receives 28 cents.

"Now, Mr. President, this is not an exaggeration, but on the contrary, it is a fairly typical case. These short-line railroads are the 'feeders' of the trunk lines. Without them the trunk lines would have practically no lumber tonnage. Like the many small streams whose waters join to form a mighty river, the tap lines of the South gather together a mighty volume of freight traffic that constitutes the very life blood of the larger railroad systems. Yet in many cases they receive for their important service as their division of the through rates a mere pittance, which keeps them constantly on the verge of bankruptcy and renders them incapable of performing satisfactorily the service which the public is entitled to demand.

Mr. LaFollette. Mr. President—

Mr. Gay. I yield to the Senator from Wisconsin.

Mr. LaFollette. I should like to inquire of the Senator whether the case of the short-line roads has been presented to the Interstate Commerce Commission, if he knows?

Mr. Gay. Does the Senator mean recently?

Mr. LaFollette. Yes, within a reasonable period.

Mr. Gay. I do not know that it has.

Mr. LaFollette. I mean in order to determine what share of the joint rate they are entitled to.

Mr. Gay. I shall be glad if the Senator would furnish any information he may possess on that subject.

Mr. LaFollette. I am just at the moment inquiring whether the Senator has any information upon the subject.

Mr. Gay. No; I have none available at the moment.

The War burden has fallen very heavily on these short-line railroads; much more heavily than on the larger systems. The Director General of Railroads as-

sumed possession and control of certain railroads and refused to assume possession and control of others. I think it highly important that we clearly understand the basis upon which some railroads were taken over by the Director General while others were not. I believe, Mr. President—and I should be very happy indeed if it could be shown that my belief is unwarranted—that the Director General in many cases refused to take over certain railroads for the sole reason that it would not be advantageous from the point of view of the Railroad Administration's financial showing to take them over. Certain it is that the Director Generol hastened to assume possession and control of practically every railroad in the country whose financial showing was good, and it is equally certain that he failed to take possession of scores upon scores of weak railroads, particularly in the South, whose financial condition for years has been extremely unfavorable.

It cannot be said, Mr. President, that these weak railroads were released from Federal control because they were not performing a war service. Where, may I ask, did the lumber originate with which our cantonments were constructed? Where did the lumber originate with which our shipyards were constructed almost overnight? Where did the lumber originate with which to build, as if by magic, a fleet of boats to cover the seven seas? This lumber, Mr. President, or a very large portion of it, came from the tap lines of the South. They labored feverishly to meet the demands of the war; they responded promptly and patriotically to the country's call; they worked almost exclusively on war business. And the Director General refused to take them over because he thought that it would be more economical, from his point of view, to make them bear the burden themselves.

Whether or not this was honest dealing and in harmony with our traditional American policy of fair play for all, I leave to the judgment of the Senate. Certain it is that the stronger railroads were taken over by the Government and paid a rental that is generally regarded as adequate, if not generous, for the use of their properties. These larger railroads were not affected by the war. Their war burden was borne by the Government, and they received as rental for their properties the same profits that they had earned in three prosperous years before the war.

I will say to the Senator from Wisconsin (Mr. La-Follette) that that answers the questions which he asked only a few moments ago.

The short line railroads were cast adrift. They had to bear alone and unaided the war prices of labor and materials. Their properties were devoted to the Nation's service just as truly as were the properties of other railroads; yet they received not one cent of rental from the Government, and all they have to show for their patriotic response to the Nation's call is red ink figures on their books.

To show the short line railroads of this country have been disadvantageously affected by the failure of the Government to assume possession and control of the properties, and to pay a fair rental for their use during the period of the war, a study has been made of the operations of nine typical short line railroad companies operating in the states of Mississippi and Louisiana. The result, which I believe to be fairly typical of the general situation, may be summarized as follows:

The Arkansas and Louisiana Midland Railway Co. earned during the three fiscal years 1915, 1916, and 1917 an average net railway operating income of $32,016. Had this railroad been taken over by the Government

and paid rental for the use of its property in the same way that other railroads under Federal control are paid, it would have received from the Government the annual rental of $32,016. As a matter of fact, it earned during the year 1918 but $3,964.69. In other words, this railroad received a profit from operation of approximately $28,000 less than it would have received had it been accorded fair and equal treatment on the basis defined by Congress for all railroads under Federal control.

The Gulf & Sabine River Railroad is another typical short line railroad of the South. Had that railroad been under Federal control it would have been paid as rental for the use of its property during the year 1918 the sum of $24,775. As a matter of fact that railroad was not taken over by the Government, and during the last calendar year it earned a deficit from operation of $12,020.24. In other words, this railroad company earned approximately $36,700 less during the last year than it would have received on the basis recognized as just and fair for all railroads under Federal control.

The Kentwood and Eastern Railway Co. is another good example. Had it been taken over by the Government its standard return would have been $42,888 per year. It actually earned last year $11,226.76.

For other similar railroads the result may be briefly summarized as follows:

Natchez, Columbia & Mobile Railroad Co., standard return $27.56; results for the year 1918 show a deficit from operations of $4,502.48.

Mississippi Eastern Railway Co., standard return $13,654.16; actual results of operation for year ended December 31, 1918, $2,284.50.

Alexandria & Western Railway, standard return $5,728.29; earnings for last year $3,249.32.

The Mansfield Railway & Transportation Co. would

have received from the Government $12,244.26. Its actual earnings for 1918 were $2,092.47.

Batesville & Southwestern Railroad Co. standard return $6,725.87; earnings for last year $13,199.54.

Tremont & Gulf Railroad Co. would have received from the Government $84,449.14. Its earnings were $48,948.52.

Had all these nine railroads been taken over by the United States Government as instruments of war, and had they been accorded the same treatment that was given to the railroads under Federal control, their aggregate rental or standard return for the year 1918 would have been $222,508.28. Their actual return aggregated $68,443.08. In other words, it may be fairly said that unjust, unfair, and discriminatory treatment of these nine railroads cost them in the aggregate the sum of $154,065.20.

Mr. Chamberlain. May I interrupt the Senator at that point?

Mr. Gay. Certainly.

Mr. Chamberlain. Were these facts brought to the attention of the Director General of Railroads by the people operating the roads and was any effort made by them to have these injustices corrected?

Mr. Gay. I am sure they have been brought to the attention of the Director Generol of Railroads from time to time. The figures which I have presented have been published. The figures can be verified from the reports of these carriers to the Interstate Commerce Commission. They are thoroughly reliable, in my opinion, and I believe they are facts, as I said, that are well known.

Mr. Walsh of Massachusetts. Does this same condition exist throughout the country to which the Senator has been referring as existing in Louisiana?

Mr. Gay. I have not only cited railroads in Louisiana,

but I have cited railroads in Mississippi and other Southern states.

Mr. Walsh of Massachusetts. It probably exists throughout other states.

Mr. LaFollette. It is pretty general with reference to the short line roads.

Mr. Gay. I have no doubt that that is true. I shall not dwell on what seems to me to be the unfair, ungenerous and thoroughly un-American treatment of these railroads during the war. Our present problem is to see to it that the injustice is not continued; and this leads me to a consideration of what seems to me to be a vitally important matter, namely, the jurisdiction of the Interstate Commerce Commission over the division of rates between common carriers.

(Id. 905-908.)

Mr. Cummins. I move that the Senate request a conference with the House of Representatives on the bill and amendment, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Vice-President appointed Mr. Cummins, Mr. Poindexter, Mr. Kellogg, Mr. Pomerene and Mr. Robinson conferees on the part of the Senate.

(Vol. 59, Part 1, page 952.)

The House disagreed to the Senate amendments and agreed to the conference requested by the Senate. The Speaker named as conferees on the part of the House, Mr. Esch, Mr. Hamilton, Mr. Winslow, Mr. Sims and Mr. Barkley. (Vol. 59, Part 1, p. 1004.)

Senate Conference committee present report (Senator Cummins) upon House bill 10453, which was ordered printed in the Record. (Vol. 59, Part 3, pp. 3043-3059.)

The House took up Conference committee report on H. R. 10453. After full conference, the conferees

recommended that the House recede from its disagreement to the Senate amendments and agree to same with an amendment. Here follows bill as amended and agreed to by conferees. (Vol. 59, Part 4, pp. 3243-3266.)

Mr. Esch stated in part (Id. p. 3268):

"Another thing I wish to call your attention to is in regard to the short line railroads. I do not think any one subject in connection with the bill has caused more discussion and aroused a greater interest than the short line roads. We have sought to deal generously with those carriers. The conference agreement deals with them more generously than did the House bill. In the House bill we did not take care of all the short lines on the question of guaranty. We practically limited them to those that were in competition with the roads under Federal control, but did not take care of those 'connected with' a road under Federal control.

"The Senate bill had the latter provision, and the House has agreed to it. So that these short line roads are now taken care of in the provision as to deficits and the guaranty provision. This guaranty provision is for a period of six months. Under the Senate bill there was uncertainty as to the period of the guaranty. It allowed two months in which to file claims for increases and four months thereafter in which the commission could determine the amount of such increases, leaving, therefore, the period rather undefined. The Senate has yielded and adopted the House provision as to a straight six months' guaranty.

"But the question will be raised why we should guarantee at all. When Federal control ceases why not have the guaranty of the Government for a standard return also cease? The reason lies in the financial straits of the carriers when Federal control shall cease.

"What is the situation? Prior to the war 60.38 per cent of the roads of class 1 earned a dividend and paid their interest. The balance did not. During the period of Federal control only 57 of the 175 class 1 roads earned their interest and only a few paid dividends.

"One hundred and eight of them did not earn their interest, and, of course, could not pay dividends, and many did not earn their operating expenses.

"With this situation confronting the carriers on the 1st day of March, the committee of conference indorsed the attitude of both Senate and House, continuing the guaranty in the House bill for a straight term of six months.

"In 1919, 108 class 1 roads lacked $60,000,000 of earning their interest and fixed charges. The net operating income last year was only practically half of the standard return which we guaranteed. Should we thrust these roads on their own resources on the 1st of March without a guaranty, I make the prediction that within three months 50 per cent of them would go into receiverships. Do we want to do that? Ought we to do it? No; because receiverships for railroads means receiverships for industrial plants and all classes of business throughout the country.

"I believe that in other respects we have well taken care of the short lines with respect to the matter of the rule of rate making. The short line as a rule got only a pro rata of the distance hauled, did not get a pro rata of really what its service was worth. In this bill we prescribe that the Interstate Commerce Commission shall have the right, even on its own initiative, to create just and equitable divisions of rates between the short lines and its trunk-line connections, and we prescribe what the Commission shall consider in arriving at what is a proper division of the rates. We also take care of them in the matter of the diversion of traffic.

They have often suffered because the trunk line would divert traffic from the short line. We take care of them also with regard to traffic which is not routed by the shipper, but which the trunk line could at junction or terminal points divert to a favorite carrier. We take care of that situation. We also permit the joint use of terminals, and we adopt the Senate suggestion to the effect that there shall be included within terminal facilities main-line track or tracks within a reasonable distance outside of the terminal. It will avail a short line nothing if it can get to the city limits and then can not go over the tracks of the trunk line and into its terminal. We protect that situation under the supervision of the commission.

"We take care of them in the matter of consolidations, and also allow them 100 per cent compensation under the Federal Control Act. We also take care of them in the matter of loans to carriers.

I think on the whole the short line roads have been fairly and possibly generously treated, but unless they are fairly and generously treated the trunk line itself may suffer, because the short line is the feeder for the trunk line, and it is as necessary to the people living thereon as is the trunk line to the people it serves.

"In the guaranty section, the Senate bill provided that the excess of the guaranty over the standard return based on the test period should be paid into the Treasury of the United States. The House bill had no such provision. The House in this particular receded and the excess is to be paid into the Federal Treasury, but the House bill safeguarded this matter by giving the Interstate Commerce Commission supervisory control over the expenditures of the carrier during the six months, because you can readily understand that unless there is some supervisory control over these expendi-

tures for maintenance of way, equipment, and so on, the carrier might spend so much money thereon that there would not be any surplus. The carrier might make abnormal, unreasonable expenditures. We give the commission a supervisory control over expenditures during the six months period, and the commission can say to the carrier. 'We shall demand a restatement of accounts at such time as we see fit and proper, in order that there may be no padding of the expense account of your roads during the six-month guaranty period.' We go further and say to the roads that if during the six-month guaranty period they need advances to help pay operating expenses, we will make advances on proper security, and should the advances exceed the guaranty, the excess will have to be repaid."

Mr. Barkley stated in part (Id. p. 3272):

"But we did take them over. We did operate them during the war. We did agree to pay them a sum equal to their average income for the three years previous, and we did agree that when returned they would be in practically as good physical condition as when taken over. In order that these agreements might be kept we have taxed the American people something over $850,000,000 in order to pay out of the National Treasury the losses sustained by the government in the operation of the railroads. This amount must be wiped off the books as a war loss, due entirely to the fact that the expenses of the roads on account of increases in wages and costs of materials were larger than the increase in revenues resulting from increased rates.

"The government, however, has done much more than merely make good this loss.

* * * *

"In addition it guarantees to them for the next six months the same proportionate income which they have

received from the government during the period of Federal control, and if the same ratio of revenue and expenses should prevail during that six months which has prevailed on the average during the Federal control, the loss to the government by reason of this guaranty will amount to nearly $200,000,000. In addition to all this, the pending bill proposes to make good the losses off all the railroads sustained during the period of the war and Federal control, whether the roads were ever taken over or not and regardless of whether they rendered any service to the government in connection with the war.

H. R. 10453 passed by the House February 21, 1920. (Id. p. 3316).

February 28, 1920, Senate took up conference report on H. R. 10453 (Vol. 59, Part 4, p. 3326).

Senator Robinson spoke in part as follows: (Vol. 59, Part 4, p. 3329):

"It seems neither necessary nor appropriate, in view of the publicity which has been given to the measure and explanations of its provisions which already have been made by others, that I should undertake a complete review of the conference report.

"Important subjects dealt with among others include:

(1) Legislative approval and express authorization of the return of the railroads to private control and operation March 1, as proclaimed by the President, and the settlement by him of matters arising out of Federal control;

(2) Provisions relating to compensation of carriers, including carriers having no contract;

(3) Procedure respecting causes of action arising out of Federal control;

(4) The refunding of carriers' indebtedness to the United States;

(5) A six months' guaranty to carriers after termination of Federal control;

(6) New loans to railroads;

(7) Provisions relating to water transportation;

(8) Generous treatment of short line railroads;

(9) Modification of the long-and-short-haul clauses of the act to regulate commerce;

(10) Federal control of issuance of stocks and bonds by carriers;

(11) Provisions relating to rates and returns of railroads; and finally

(12) Labor provisions.

* * * * *

"The primary purpose of the pending legislation, broadly stated, is to terminate Federal control and restore the railroads to their owners for operation under conditions which will prevent a breakdown of the transportation systems and assure the public necessary and adequate facilities.

"To comprehend the important phases of the problem is pre-requisite to a fair determination as to the sufficiency of the remedies agreed upon.

"Federal control of railroads was caused by the threatened breakdown in the operation, particularly in the eastern part of the United States, at the time we entered the war.

* * * * *

"The policy of the conference bill accords generous treatment to short line railroads. While there are a few short lines which probably should never have been constructed, considered as a whole the short lines are regarded by the conference and are treated in this bill as indispensable to the industrial and commercial interests of the entire country, as well as to the development of the various localities which they immediately serve."

Febraary 23, 1920—Senate agrees to conference report (Id. p. 3349).

The bill was examined and signed by the Speaker of the House and the president pro tempore of the Senate. (Id. p. 3435) and presented to the President (Id. 3484) and approved (Id. p. 3709).

## EXTENSION OF REMARKS

Mr. Madden said in part:

"Many members here are opposed to the bill because of what they call improper guaranties. Now, what is it that is guaranteed? Nothing, except that the roads shall be turned over to the owners with a certainty that they will be permitted to earn the amount paid them during the war under the standard return contract for a period of six months from the 1st of March, and this guaranty applies also to the wages of the men, which it is provided shall not be reduced by any action of the railroad owners during the six months' period ending September 1 next." (Feb. 21, 1920, Vol. 59, Part 9, p. 8833).

"On the whole I think the bill will meet the approval of the people of the country. It is a simple measure of justice to the owners." (Feb. 21, 1920, Vol. 59, Part 9, p. 8833).

Mr. Lankford said in part:

"What is the sugar of the present bill? Well, to me the good part of the present bill is its most excellent provisions for the short lines of railroads. The short lines of railroads mean so much to my section of the State that I felt like I could not afford to vote against anything in their behalf. I found myself studying hour after hour over the bill and trying to whip myself into line to vote for the bill on account of the short lines of railroads and because many of my friends asked me to do all I could for the short lines. I begged the conferees

to put in the provisions in favor of the short lines which are in the bill, and now they are in the bill; and at last I was forced to vote against the bill because of the poisonous, vicious provisions of the report." (Feb. 23, 1920, Vol. 59, Part 9, p. 8852).

Mr. Connally said in part:

"Mr. Speaker, the measure now before the House, the conference report on the railroad bill, is of such importance and affects so directly every consumer in the United States that I desire to state some of the reasons prompting me to vote against the measure:

"First, it requires the Government to pay to the railroads the amounts due for rental during Federal control, but allows the railways to fund their indebtedness to the Government, amounting to approximately $1,300,000,000, and at their option to owe the Government this sum for 10 years.

"Second, it guarantees the railroads' income for six months after termination of Federal control. If the roads do not earn the fixed income with high rates the Treasury is to make good the deficit." (Feb. 21, 1920, Vol. 59, Part 9, p. 8859).

Mr. Strong said in part:

"The railroads were taken over by the Government as a war necessity, the agreement being made that a 'standard return' or rental, would be paid to the owners, and that they would be returned when the war was over. The government loss during the operation of the roads has been over $636,000,000; many millions have been expended in improvements which the roads are to repay when they are able. The present expenditures over receipts is between $1,000,000 and $2,000,000 per day." (Feb. 21, 1920, Vol. 59, Part 9, p. 8878).

"It has been the duty of the committee to draft a bill which would include what they felt to be the best of all

the plans proposed, avoiding what they believed to be objectionable. On November 8 the Esch bill, named after the chairman of the committee, was finished and reported to the House. It contained guaranties necessary to continue the standard return until such time as it was thought the owners could either reduce their expenses or increase their incomes." (Feb. 21, 1920—Vol. 59, Part 9, pp. 8878-9).

"It continues the same standard return provided in the Esch bill for a period of six months, during which time the wages now paid the men are not to be reduced." (Feb. 21, 1920, Vol. 59, Part 9, p. 8879).

Mr. Browne said in part:

"I am against the guaranty provisions of this bill. * * * In general, it provides that every railroad company shall be guaranteed by the Government in its earnings an amount equal to the average amount that it received the three years preceding our entrance into the war, this guarantee to last six months after the railroads are turned back to their owners." (House Record, Nov. 17, 1919, Vol. 58, Part 9, p. 9219).

Senate Bill 3288, being the Railroad Bill, presented by the Senate Committee on Interstate Commerce, was introduced in the Senate by Senator Cummins and placed on the Senate Calendar October 23, 1919. (Vol. 58, Part 7, pp. 7374-5).

The Senate Committee also presented a report (No. 304) through Senator Cummins to accompany S. 3288, known as the Railroad Control Bill, which was received and ordered printed. (Id. Vol. 58, Part 8, p. 8187).

NOTE: The debate on S. 3288 continued over an extended period to and beyond the time the Senate requested of Senator Cummins and took up and considered HR 10453 along with S. 3288. From these two bills came the bill that went to conference, which, with changes, as was agreed upon by the con-

ferees, was reported back to the Congress and enacted into law as Transportation Act of 1920.

That which follows is quoted from the Congressional Record of the 66th Congress during the Senate debate of the bill. Senator Cummins, Dec. 4, 1919, spoke in part as follows:

"The Federal control bill, which became a law on the 21st of March, 1918 provided, as you all know, for the possession on the part of the Government of all the railway systems of the United States of which the President chose to take possession, under a paragraph of the act of 1916, of which I think the distinguished Senator from Colorado (Mr. Thomas) was the author. The dominating features of the act of 1918 were, first, a provision authorizing the President to enter into agreements with the railway systems of which we took possession relating to the compensation to be paid to these several companies while under Federal control. This compensation in the aggregate, and as related to class 1 railroads, amounted, in round numbers, to $900,000,000 annually; and here I may be permitted to say that on the 1st of January, 1918, the President, in fact, took possession of all the railways of the United States. I say 'all.' There may have been very slight and negligible exceptions, but it is practically true that when the notices were sent out by the President on the 1st of January, 1918, they comprised all the railway systems of the country. The act of March 21, 1918, provided, however, that at any time prior to the 1st of July, 1918, the President could dismiss from Federal control any system or systems of railway which in his judgment it was not necessary to retain in order to carry out the purposes of the act. I may remark again that there were some of us who believed that justice required that all the railways of the United States be retained in the possession of the Government, because we felt that it was utterly

impossible for the President to dis-associate the railways and do justice to those which were dismissed from operation, inasmuch as the relation between the railways held by the Government and the railways not held by the Government was so intimate and intricate that to abandon that relation would probably result in great hardship.

"It has resulted in great hardship. That law was passed and the President vetoed it. That is my recollection. But, at any rate, just before the 1st of July, 1918, the President formally discharged a very large number of the railways of the country from Federal control. I think that he discharged at that time, or had before that time discharged, something more than 800 of the railways. These were, generally speaking, short line railways, which depended for their maintenance largely upon their traffic relations with the trunk lines. The $900,000,000 of which I have spoken as the maximum of the compensation provided for in the act of March 21, 1918, is the compensation for what is known as class 1 roads; and the class 1 roads, as you all remember, are those railways whose gross revenues from operation amount to $1,000,000 or more per year." (Vol. 59, Part 1, p. 118).

"I ought to say that there is another phase of this matter which I believe Senators should bear in mind. I remarked that on the 1st of January, 1918, the President took possession of all the railroads in the United States. On the 1st of July, without physically interfering with many of them, he returned 700 or 800 of the railroads to their owners. The claims which I have mentioned do not include the claims of those companies. The short line railroads of the country are all claiming that the Government shall stand responsible for the losses which occured during the six months in which the

Government had nominal possession of their properties on account of the diversion of traffic, the destruction of their business, and the disintegration and disorganization of their entire operating and managing force. I do not know what those claims may aggregate. It makes me shudder a little when I look forward to what may be insisted upon against the Government in the next few years." (Vol. 59, Part 1, p. 122).

"I was never able to ascertain from my survey of the situation just what actuated the Railroad Administration in dealing as it did with some of the short line railroads. I think that in all the history of our relations to the railways that there never was injustice that was comparable with the injustice which the Government has inflicted upon some of the weak short lines of railroads, barely able to sustain themselves in normal times and utterly unable to maintain themselves during the last two years. We have done precisely what I stood here and said we would do—we have paid to the big railroads a compensation so excessive as to shock the moral sense of mankind and we have permitted the weaker railroads, which are just as necessary for the transportation of the United States as are the stronger ones, although not in the same degree, to struggle through these two years in a way that creates the only sympathy I have ever felt toward railway management. There are so many instances in which the superior force of the Railroad Administration, with its monopoly of all the influences of the land, has exerted against the shorter, weaker lines that I could not enumerate them if I were to stand here all the remainder of the afternoon. As I replied to the Senator from Kansas one of the prominent motives in the minds of all the members of the committee in the construction of this bill has been to do tardy and, I fear, incomplete justice to these roads that have

been so severely discriminated against in the last two years. But we will come to that with more detail later on." (Dec. 4, 1919, Vol. 59, Part 1, p. 122).

"The average rate of return upon the property investment accounts of all the railroads in the United States for the test period was 5.2 per cent, and if it were assumed that the value of the property is the amount of the property investment accounts, this increases that average by three-tenths of 1 per cent. My own judgment is, however, that it will be found that the value of the properties is less than the aggregate investment accounts and therefore the 5½ per cent will probably not be greater than during the test period.

"Those of you who heard me discuss the Federal Control bill heard me say that I thought the compensation which that bill provided for was something like $200,000,000 more than it ought to be. I am of the same opinion still. I have seen nothing to disturb my judgment in that regard, and inasmuch as it has been suggested to me that there is something inconsistent in my advocacy of a 5½ per cent basis and my statement that the compensation provided for in the Federal control bill was $200,000,000 more than it should be, I beg the privilege of pointing out the difference between the two cases.

"In the Federal control bill we were providing for an income for each individual railway, and I felt then and I feel now that the amounts which we agreed to pay to a great many of the railroads which passed under Federal control were excessive; but now we are dealing not with a particular railway, but with an entire system of railways in an entire rate-making district, and there is here no provision to pay or allow to these stronger railroad companies the excessive income which was permitted under the Federal control act." (Vol. 59, Part 1, pp. 135-136, Dec. Dec. 4, 1919).

Senator Kellogg, December 5th and 6th, 1919, in speaking on the bill in question stated in part:

"Let us therefore consider the financial condition of the railroads when the Government took them over and the present financial condition. In 1917 the gross earnings of all class 1 railroads totaled $4,050,463,579. The total operating expenses aggregated $2,858,212,210, and the net income equaled $974,778,937, while the best information we can get for 1919 will show that the railroads will earn substantially $5,232,000,000 with less business than in 1917. This estimate may be a little large on account of depression in November. This is on account of an increase in freight and passenger rates from 25 to 50 per cent. And yet the operating expenses of the roads have increased from $2,858,212,210 to an estimated operating expense, including taxes and rentals, of $4,695,500,000, leaving an estimated net income of only $536,500,000, or nearly $400,000,000 less than the guaranteed income which was the average of the net earnings of the roads for the years 1915, 1916 and 1917.

* * * *

"In 1917 all of class 1 railroads of the United States earned 5.38 per cent on their property investment. This was the last year of private operation. In 1918 they earned 3.71 per cent and during the first six months of 1919 they earned eighty-four one-hundredths per cent—of course I am taking book values because I have no others available—but the first six months of the calendar year is, on the average, the poorest half of the year. And the first nine months they had earned 2.19 per cent, which is estimated for the year to be 2.92 per cent, or less than the interest on the bonds and fixed charges of the railroads without paying anything at all on capital stock; and it is conceded by everyone that the bonded indebtedness of the railroads is six or seven bil-

lions less than the fair value of the properties.

"I ask to have printed in the Record as a part of my remarks as Appendix B a statement showing the names of the railroads, the miles operated, the net operating income, the fixed charges, and the balance over fixed charges for the first nine months of 1919, and also a summary of this statement by districts; and as part of the same statement Appendix C, showing the railroads which earned a greater or less sum than the standard return. (Id. pp. 217-218).

## APPENDIX B.

Federal earnings compared with corporate fixed charges, 9 months to September 30, 1919. Recapitulation.

| District | Miles Operated | Net Operating Income. (Federal Operation) | Fixed Charges for Period | Bal. Over Fixed Chgs. |
|---|---|---|---|---|
| Roads showing Balances: | | | | |
| Eastern Dist. (23 roads) | 18,052.05 | $ 95,008,866 | $ 62,318,180 | $ 32,690,686 |
| South Dist. (12 roads) | 12,693.63 | 35,716,158 | 24,061,924 | 11,654.234 |
| West. Dist. (22 roads) | 52,822.10 | 140,900,353 | 74,113,211 | 66,787,142 |
| Total (57 roads) | 83,567.78 | 271,625,377 | 160,493,315 | 111,132,062 |
| Roads showing Deficits: | | | | |
| Eastern Dist. (42 roads) | 40,147.72 | 42,291,404 | 129,199,206 | *86,907,802 |
| South Dist. (23 roads) | 30,292.43 | 19,275,888 | 41,813,954 | *22,538,066 |
| West. Dist. (43 roads) | 74,946.03 | 65,790,482 | 124,134,880 | *58,344,398 |
| Total (108 Rds.) | 145,386.18 | 127,357,774 | 295,148,040 | *167,790,266 |
| Net Total: Eastern Dist. (65 roads) | 58,199.77 | 137,300,270 | 191,517,386 | *54,217,116 |

| | | | | |
|---|---|---|---|---|
| South Dist. (35 roads) | 42,986.06 | 54,992,046 | 65,875,878 | *10,683,832 |
| West. Dist. (65 Rds.) | 127,768.13 | 206,690,835 | 198,248,091 | * 8,442,744 |
| Total (165 Rds.) | 228,953.96 | 398,983,151 | 455,641,355 | *56,658,204 |

*Deficit.

Note: "Net operating income" is the balance of operating revenues after payment of operating expenses, taxes chargeable to railway operation, equipment, and joint facility rentals, and is taken from the monthly returns of the roads to the Interstate Commerce Commission. The entries under "fixed charges" are based upon returns for the year 1918. They comprise interest on funded and unfunded debt, rents for lease of road, corporate and special war taxes not chargeable to railway operation, expenses of maintaining corporate organizations, and other income charges for the current year. Neither dividends nor lapover accounts with the Railroad Administration relating to earlier years are included. Actual fixed charges for 1919 will be somewhat greater than indicated by these figures, and the relative ability of the railway companies to meet these charges somewhat less. "Balance over fixed charges" represents the amount available for dividends, for appropriations, and for surplus. (Id. p. 229.)

In the course of the Senate debate on December 15, 1919, the following transpired:

"Mr. Curtis: Mr. President, I offer the amendment which I sent to the desk.

Mr. Kirby: Mr. President—

The Vice-President: Does the Senator from Kansas yield to the Senator for Arkansas?

Mr. Curtis: I should like to dispose of this amendment. If the Senator wants to ask me a question, I yield.

Mr. Kirby: No; I wanted to suggest the absence of a quorum. I think we ought to have enough Senators here to consider this bill, if we are going on with it. However, I will not make the suggestion.

Mr. Curtis: Let the amendment be disposed of.

The Vice-President: The amendment will be stated.

The Secretary: In line 11, beginning on page 10, after the word 'carriers,' it is proposed to strike out the words 'of which 'Federal control' was relinquished prior to July 1, 1918, as provided in the act of March 21, 1918, this act shall constitute a guaranty for the said 'period,' and insert the following:

"Referred to in the following provision in section 1 of the act of March 21, 1918: 'That every railroad not owned, controlled, or operated by another carrier company, and which has heretofore competed for traffic with a railroad or railroads of which the President has taken the possession, use, and control, or which connects with such railroads and is engaged as a common carrier in general transportation, shall be held and considered as within 'Federal control,' as herein defined, and necessary for the prosecution of the war, and shall be entitled to the benefit and all the provisions of this act,' and subsequently relinquished regardless of the wishes of the owners: This act shall constitute a guaranty—

(a) to the extent of any actual operating deficit, including taxes, that may have been incurred during the period January 1, 1918, to the date when this act takes effect; and

(b) to constitute a guaranty until expiration of the four months' period heretofore provided in this section—"

Mr. Curtis: Mr. President, the reason for offering this amendment was very well stated a few minutes ago

by the chairman of the committee. I had in mind the road referred to by him, the Kansas City & Northern, and also one other road in the State of Kansas. The Kansas City & Northern had made a net profit of $17,000 the year before it was taken over by the Railroad Administration. The administration took over the road, handled it for a time, refused to make a contract, has taken possession of and retained its terminals, directed the movement of its cars, taken its coal, and diverted its freight, and now that road finds itself in debt from three to four hundred thousand dollars. I am told that when the Railroad Administration put its hands on it the road did not owe a dollar in the world. That is one railroad. There was another road without any indebtedness that has been able to live, but the Railroad Administration has diverted its freight, and so manipulated its affairs that the road will have to stop on the 1st of January if something is not done. This other road, the Kansas City & Northern, has stopped operation, the men have been discharged, and the people along the line who have spent a good many thousands of dollars in building that road are now getting no accommodations whatever.

Mr. Kirby: Mr. President, is it the purpose of this amendment to relieve roads that were first taken over, or sought to be taken over by Government control and afterwards released?

Mr. Curtis: The so-called short lines.

Mr. Kirby: Is it the Senator's idea, then, that they ought to be guaranteed some return hereafter, notwithstanding they have not been under Government control at all?

Mr. Curtis: If the Government has been diverting the freight and managing them and preventing the operation of the road in the usual way, as was the case with

the Kansas City & Northern, and has taken possession of and holds its terminals in Kansas City.

Mr. Kellogg and Mr. King addressed the Chair.

The Vice-President: Does the Senator from Kansas yield; and if so, to whom?

Mr. Curtis: I yield to the Senator from Minnesota.

Mr. Kellogg: Do I understand the Senator to say that as to these two roads the Government has had possession all the time?

Mr. Curtis: It has had possession of one of them, and in the case of the other it has controlled and diverted the freight and agreed to make contracts. The parties have been on here four or five times, but the contracts have never been signed. The Government says it has not had possession. That is a disputed question.

Mr. Kellogg: Mr. President, if the road has been in the hands of the Government, under the Federal control act, it has its claim for compensation during the entire period.

Mr. Curtis: But, Mr. President—

Mr. Kellogg: Just a moment, if the Senator will excuse me, until I get through with my statement. If it is not in the hands of the Government, if it has not been taken over and operated, then if has not a claim for indemnity. We ought not to decide that question in this bill, because there are a great many short lines that were taken over and turned back, and we are not proposing to pay them for the last two years a guaranteed return, and there is no reason why we should pay the Kansas City & Northern for two years if we do not pay them all; and if we are going to open the door now we will open that door to every railroad company in this country which was taken over and then turned back again.

Mr. Curtis: Mr. President, I think the circumstances connected with the Kansas City & Northern justify this

amendment. I do not know that it is drawn so that it will exclude others, but that matter can be very easily handled in conference. It will take but a very short time, and I have no objection to its being changed to meet the situation. The object desired is to have the roads which were taken by the Railroad Administration—or where the greater part of its property was taken and held and where its freight was diverted and it was controlled by the Railroad Administration, and other roads in like condition—fairly treated.

Mr. Kirby: Mr. President—

The Vice-President: Does the Senator from Kansas yield to the Senator from Arkansas?

Mr. Curtis: I yield to the Senator from Arkansas.

Mr. Kirby: Does the Senator expect to have a question of fact determined here by this bill?

Mr. Curtis: No; I do not want a question of fact settled—not at all. If the amendment is not worded now so that it requires a showing to be made to the proper authorities, I would be perfectly willing to have the conferees make such a change of the language so as to leave the question of fact to the Interstate Commerce Commission or to some other organization.

Mr. King: Mr. President, will the Senator yield?

Mr. Curtis: Certainly.

Mr. King: Is not the bill sufficiently broad to include all roads over which the Government has exercised jurisdiction or of which it took possession during the period of the war?

Mr. Curtis: I think not.

Mr. King: That is a question of fact that is easily susceptible of demonstration. If the Government took this road over and did not return it, then, under the bill, the Government would have to meet the guaranty; but if it did take it over and returned it—and that is a fact

easily demonstrated—then it is clear that we ought not to make a guaranty for this road unless, as the Senator from Minnesota says, we guarantee all of them.

Mr. Curtis: But here is the trouble: The Government took the road over and did not make a contract, but it has been directing its management ever since—has full and absolute control of its property, has full control of its terminals in Kansas City, and his diverted freight according to its own desires and ordered that a certain number of cars of freight should be delivered to the line just the same as if it had the legal control. The chairman of the committee made a very fair statement in regard to the treatment of this railroad a few moments ago.

Mr. Cummins: Mr. President, I think the amendment is entirely within the spirit of this bill. We have already made provision in the bill for all these roads that were taken over—and they were all taken over. That does not settle the question of fact. I know they were taken over, because I have seen the notices which were sent out by the Director General about the 1st of January, 1918, in which the Government did undertake to control all of them; but this bill covers those that were dismissed from Government control prior to July 1, 1918. Unfortunately, however, the road of which the Senator from Kansas (Mr. Curtis) speaks was not dismissed prior to July 1, 1918. Therefore, it could not come within the terms of this bill, and it has just as good a right to be within the terms of the bill as any of the other roads. So, while I am not sure that the amendment is drawn just as it ought to be—I have not had an opportunity to review it—I know that the spirit of it is right. I think it ought to be subject to some kind of revision by the conference committee or in some other way.

Mr. Curtis: I am perfectly willing that that shall be done.

Mr. King: Mr. President, as I understood the Senator, he stated that he knows that this road was taken over by the Railroad Administration.

Mr. Cummins: No; I said that I know the facts with regard to the taking over of railroads, because the facts were developed before the Committee on Interstate Commerce.

When the President took possession of the roads on the 27th day of December, 1917, he caused to be sent out—not he, of course, personally, but his Director General caused to be sent out—notices addressed to every rail road in the United States containing a copy of the proclamation which the President had issued, setting forth the war necessity and other things of that kind, and directing the railroads to which the notices were sent to hold themselves for the Government of the United States. I know that subsequently certain persons connected with the Railroad Administration claimed that these railroads had not been taken over, and the injustice of it was so apparent that I introduced a bill, just before the 1st of July, 1918, declaring that these roads were in the possession of the United States and must be dealt with accordingly. The Senate passed the bill and the House passed the bill, and the President vetoed it. Such is my recollection. We are trying in this bill for counsel. These sections are for counsel largely. We are trying to do some tardy justice to these roads, many of which have in fact been ruined by the injustice practiced by the Railroad Administration upon them.

Mr. King: Mr. President, did not the Railroad Administration simply divert the traffic over roads which controlled, over which it exercised jurisdiction, and

whose employees they took under protection and direction, and other roads over which it did not assume jurisdiction, and to which it gave no traffic to, and leave them to obtain just such traffic as they could obtain from the country in which they were operating?

Mr. Curtis: Mr. President, I have stated that in this case I know that they did direct certain traffic to go over this road. I know that they did take possession of the terminals, because the Railroad Administration advised me that they did so. I know that they filled the tracks of the terminals full of cars of other roads. I know that they did advance money to this railroad.

Mr. Cummins: There is no doubt about the Government having taken over the railroad to which the Senator from Kansas refers. Nobody questions that.

Mr. King: Mr. President, it is quite likely, under the statements made by the Senator from Kansas and the Senator from Iowa, that this road ought to come within the provisions of this bill and obtain whatever guaranties other roads obtain. But it does seem to me that we ought to be very cautious about enacting legislation that would give any pretext whatever to roads that the Government did not take possession of to come in and demandthat the Government should guarantee them their earnings during the period of the war.

Mr. Curtis: If the amendment is broad enough for that, it can be modified in conference; and I have already told the chairman of the committee that I should be perfectly satisfied if the conferees made such a change as they thought necessary. There are certain short lines that are entitled to relief.

Mr. King: Let me ask the Senator from Iowa whether the language of the amendment offered by the Senator from Kansas could in any way be tortured in bearing the interpretation that the Government must

pay this guaranteed return to any of the roads throughout the United States which confessedly the Government did not take over?

Mr. Cummins: The question of fact is still open. It is not adjudicated by the bill.

Mr. King: Let me make myself clear. I know a number of small roads which insisted that the Railroad Administration had taken them over under the proclamation made by the President. They were promptly notified that they were not taken over, to continue their operations as they had been operating in the past, and that the Government did not intend to disturb them in the management and control of their own roads; but they have persisted from that time until the present in insisting that the Government had taken them over, although it did not; and, of course, if you permit language that will bear any sort of an interpretation that would include them within the terms of the bill, they will insist that the Government shall pay them this guaranty, the same as it will pay these other roads which unquestionably it did take over and to which it is obligated.

Mr. Cummins: I have not read the amendment of the Senator from Kansas carefully enough to answer that. I only know the spirit of it, and with the spirit of it I am in harmony.

Mr. King: As I understand, the amendment has not been printed?

Mr. Curtis: No; it has not been printed.

Mr. King: It has just been read from the desk, and I would like to ask the Senator if he would object to having it printed and give us an opportunity to examine it.

Mr. Curtis: I have no objection to having it printed and go over until tomorrow.

Mr. Kellogg: On that subject I will state to the Senator from Utah (Mr. King) that when the President

published his order, under the law of 1916, authorizing the Government to take over the railroads, it included all the railroads in the United States in a general description. Afterwards the question arose as to what roads had been taken over and what not, and before the 1st of July, 1918, the President released a large number of railroads in the United States, many of them known as short lines. Those companies have been operating their own railroads from that day to this. They claim, and undoubtedly it is true, that they have suffered by reason of the general rise in wages and operating expenses, and that they could not raise their rates because none of the roads had raised their rates, beyond the one increase of 25 per cent upward. They came to the committee and insisted upon a certain indemnification, and the committee provided that pending the six months after the bill passes they shall be given the same guaranty as the other roads. But it is manifest that if one or two of them are given the guaranty to run clear back to 1918, it will not be possible to leave any of them out, and Congress will have to take care of the entire number of railroads that have been in private operation.

Mr. King: Mr. President, will the Senator permit a question?

Mr. Kellogg: Certainly.

Mr. King: Does the Senator think the Government ought to be burdened with that responsibility?

Mr. Kellogg: It was not the opinion of the committee that the Government ought to assume that, and the committee restricted the relief to the time of resumption after the roads go back.

Mr. King: Does the Senator think the Government ought to pay anything to those roads for the priod from the taking over until the time that the proclamation was issued restoring them, when there was no demand made

to regulate or control them or operate them?

Mr. Kellogg: It was impossible for the committee to examine into one or two thousand railroads scattered over the country, to know to what extent they had suffered or what obligation on the Government was under to them.

Mr. King: Does the bill contain any provision for the method of determining what shall be paid to them?

Mr. Kellogg: Yes; it makes the provision for determining what shall be paid to them.

(Id. 581, 582 and 583.)

Mr. Curtis: I offer an amendment. I will state that it is the amendment I offered last night, which was printed and read, and about which remarks were made by myself and the chairman of the committee. I have nothing more to say about it. The chairman of the committee says he has no objection to it.

The Vice-President: The Secretary will read the amendment.

The Secretary: On page 10, in lines 11 to 14, after the word "Carriers" strike out the words "of which Federal control was relinquished prior to July 1, 1918, as provided in the act of March 21, 1918, this act shall constitute a guaranty for the said period," and insert the following: "referred to in the following provision in section 1 of the act of March 21, 1918: 'That every railroad not owned, controlled or operated by another carrier company, and which has heretofore competed for traffic with a railroad or railroads of which the President has taken the possession, use, and control, or which connects with such railroads and is engaged as a common carrier in general transportation, shall be held and considered as within Federal control as herein defined, and necessary for the prosecution of the war, and shall be entitled to the benefit of all the provisions of this

act;' and subsequently relinquished regardless of the wishes of the owners, this act shall constitute a guaranty (a) to the extent of any actual operating deficit, including taxes, that may have been incurred during the period January 1, 1918, to the date when this act takes effect; and (b) to constitute a guaranty until expiration of the four months' period heretofore provided in this section."

The amendment was agreed to.

(Id. 674.)

Mr. Cummins: Mr. President, in order that the Senate may know precisely the meaning of what I ask, I desire to suggest that at this point I intend to request unanimous consent to take up House Bill 10453.

Following that I shall ask unanimous consent, or make a motion, as the case may be, that in lieu of the amendment proposed to be inserted in said bill—the same being the portion printed in italics—there shall be substituted the Senate bill, which we have been considering, and as amended up to this time.

In connection with that I desire to ask unanimous consent that when the said House bill reaches the Senate those Senators who have reserved amendments made to the Senate bill in the Committee of the Whole for separate votes in the Senate shall have the same rights as respects those amendments incorporated in the House bill, or the same as they would have possessed had the Senate bill continued on its passage.

With that explanation, Mr. President, I ask unanimous consent to proceed to the consideration of House Bill 10453, Calendar 280.

The Vice-President: Is there objection?

*There being no objection, the Senate, as in the Committee of the Whole, proceeded to consider the bill (HR 10453) to provide for the termination of Federal control*

*of railroads and systems of transportation; to provide for the settlement of disputes between carriers and their employees; to further amend an act entitled "An act to regulate commerce," approved February 4, 1887, as amended, and for other purposes, which had been reported from the Committee on Interstate and Foreign Commerce with an amendment, to strike out all after the enacting clause and insert a substitute.*

Mr. Cummins: Now, Mr. President, I ask unanimous consent that in lieu of the matter proposed to be inserted in the House Bill, H. R. 10453, there shall be inserted the text of the Senate Bill S. 3288, as amended up to the present time, and that reservations concerning amendments can be made in the Senate upon House Bill 10453 in the same way and to the same extent as though Senate bill 3288 had continued on its way to final passage.

(Id. 884.)

December 17, 1919, in the debate on the Senate Railroad bill, the following transpired:

Senator Pomerene: (Id. 725, 726, 727).

"During the test period recognized under the railroad control act the average earnings based upon the book valuations of the railroads for those three years, one of which was a bad year and the other two prosperous years, about 5.24 per cent."

* * * * *

"The Secretary of the Interstate Commerce Commission late yesterday sent me a reply, and I think I shall read it, because it explains the figures which I shall submit later on. It reads:

'As requested in your letter of this date, I give you herewith the net railway operating income of class 1 roads for each month of 1919, in comparison with the guaranteed amount. The guaranty, of course, is an annual one, but the total amount has been distributed by

months in accordance with the monthly fluctuations in net earnings during the test period. This statement is for the large roads regularly included in our monthly reports of revenues and expenses. It will not agree precisely with the published statements issued by the Director General because of a somewhat different mileage covered by our statements but the discrepancies are not of importance.'

"Now follow the figures. If Senators will permit me, I will just give the round figures, because they will be able to follow them more closely, and I shall furnish the exact figues to the reporter later. In January, 1919, the net railway operating income was $18,700,000. Bear in mind that this sum is subject to the payment of interest and dividends. During the same month the standard return guaranteed by the Government under the railroad control act was $55,400,000, a deficit for that month of January of $36,600,000.

"In February the net railway operating income was $10,100,000, the standard return guaranteed was $46,400,000 and the deficit $36,300,000.

"In March the net railway operating income was $10,800,000. The standard return guaranteed for that month was $67,800,000, a deficit of $57,000,000.

Mr. Hitchcock: Will the Senator explain why the deficit was so much larger and why the requirement was much greater for that month than for other months?

Mr. Pomerene: During the winter months the business of the companies is always less than it is for the late summer and autumn.

Mr. Overman: Does the Senator know why the standard return is so large one month and not so large another month? It seems to me rather strange that in one month it was $56,000,000, whereas the month before it was only $36,000,000.

Mr. Pomerene: That may all be.

Mr. Overman: Why the difference in the standard return

of $20,000,000?

Mr. Pomerene: The Interstate Commerce Commission exacts monthly statements from all the railroads of the country and they are to be filed within 26 days after the month has expired. They take the net earnings, as I understand it, from each of the railroads during each of the three years of the test period and then average them and that makes the rule whereby to give the standard of compensation. In April the net operating railway income was $26,100,000, the standard return guaranteed was $67,100,000, and the deficit $41,000,000. In May the net railway operating income was $39,400,000, the standard return guaranteed $77,700,000, and the deficit $38,300,000.

* * * * * *

Mr. Pomerene: The Senator, I think, was not in the Chamber when I began my discussion of the matter. These are figures furnished to me by the Interstate Commerce Commission. They get monthly reports. The test period was for 1915, 1916, and 1917. As they take the reports for January, let us say, for each of those years they average them and this average makes up the compensation which the Government is to pay the railroads for the month of January during the period of Government control.

Let me take the month of June. The net railway operating income for the month of June was $52,200,000, the standard return guaranteed $83,400,000, the deficit, $31,200,000.

In July the net railway operating income was $77,100,000, the standard return guaranteed $75,600,000, so that for the first time in any month of the year we have a surplus of $1,500,000.

In August the net operating income was $92,000,000, the standard return guaranteed $87,600,000, and again there is a surplus of $4,700,000.

In September the net railway operating income was $77,700,000, the standard return guaranteed $92,100,000, and

again there is a deficit of $14,300,000.

In October the net railway operating income was $76,300,000, the standard return guaranteed $95,100,000, and again there is a deficit of $18,800,000.

So that during the ten months the total net railway operating income was, in round numbers, $481,000,000, and the standard return guaranteed for those months $748,000,000, and the deficit for the ten months is $267,000,000.

The tabulated statement referred and which was furnished by Hon. George B. McGinty, secretary of the Interstate Commerce Commission, is as follows:

Net railway operating income of large roads in the United States by months in calendar year 1919, in comparison with the standard return under the Federal Control Act:

| Month | Net Railway Operating Income, 1919 | Standard Return Guaranteed | Surplus or Deficit |
|---|---|---|---|
| January | $18,783,702 | $55,442,674 | **$36,658,972 |
| February | 10,106,268 | 46,493,912 | ** 36,387,644 |
| March | 10,842,608 | 67,738,212 | ** 56,895,604 |
| April | 26,115,214 | 67,102,681 | ** 40,987,467 |
| May | 39,462,367 | 77,729,962 | ** 38,267,595 |
| June | 52,270,702 | 83,444,790 | ** 31,174,088 |
| July | 77,176,933 | 75,650,613 | *** 1,526,320 |
| August | 92,396,635 | 87,681,468 | *** 4,715,168 |
| September | 77,763,023 | 92,122,874 | ** 14,359,851 |
| October | 76,397,213 | 95,123,649 | ** 18,726,436 |
| Ten months ending with October | *481,082,531 | 748,530,835 | ** *267,448,304 |

* Includes some corrections made in monthly returns as published.

** Deficit.

*** Surplus.

Now, let us analyze these figures a little further. The computations which I now give were made by the clerks in my office. They are simple and correct.

Senators will remember from the figures I have given that in 8 of the 10 months there was a deficit. The total deficit for the eight months was $273,457,367. There were two months in which there was a surplus, July and August, amounting for the two months to $6,241,488. The average deficit for the eight months was $34,182,207.12, and the average surplus for the two months was $3,120,744. The net deficit for the 10 months was $267,216,169. The net deficit for each of the ten months was $26,721,616.90. The total standard return guaranteed for the ten months was $748,530,835, and the total standard return for 1 month on the average is $74,853,083.50.

Also on the same day, with respect to both the Senate and the House Bills: (Id., 753 and 754.)

Mr. Fletcher: I do not see how that question arises. The House Bill is not the bill on which we are now acting. The House Bill came over here, it is true, but it is not the bill that is now under consideration by the Senate and that will be amended if this amendment is adopted.

Mr. Lenroot: If the Senator from New Jersey will yield to me, I desire to ask the Senator from Florida if he is familiar with what is known as the Curtis rule that changes the entire matter?

Mr. Fletcher: I am not referring to that rule.

Mr. Lenroot: Let me read it to the Senator, and he will at once see that the rule of which he is evidently thinking has been changed. The so-called Curtis rule reads:

"Conferees shall not insert in their report matter not committed to them by either House, nor shall they strike from the bill matter agreed to by both Houses."

When this bill gets to its final stage it will be substituted

for the House Bill; it will then be the House Bill which will be before the conference; and any language that is found either in the Senate amendments or in the House Bill which is identical will not be before the conferees.

Mr. Fletcher: Then, the idea, is to substitute the pending bill for the House Bill; to report the House Bill and amend it by striking out all after the enacting clause and inserting this entire bill?

Mr. Lenroot: Yes:

December 18, 1919, Senator Thomas spoke in part as follows: (Id., 798-9)

> I know that under our agreement with the owners of this property it is our duty to live up to our covenant in all particulars. The Senator from Iowa (Mr. Cummins) led the fight in this body against that part of the present railroad law which fixed the compensation for the use of the roads. He convinced me that the rate was entirely too high, and I still think he was right about it; but the Senate disagreed with him, the House disagreed with him, the bill was passed over that and other objections, and when it became written into the laws of the United States controversy ceased to exist and compliance with its requirements became a public duty.

In Senate report No. 304, by Mr. Cummins, from the Senate Committee on Interstate Commerce, to accompany Senate Bill 3288, it is stated (pages 2 and 3):

> To understand fully the financial statement about to be made, it is necessary to refer to the Federal Control Act under which the Director General of Railroads has been operating about 230,000 miles of our 260,000 miles of railways. Whether the President took possession of all the railways under the act of August 29, 1916, at the beginning of the year 1918, is a subject of controversy into which the committee will not enter at this time. It is sufficient to say that the act of March 21, 1918 (Fed-

eral Control Act), authorized the President to relinquish at any time prior to July 1, 1918, "control of all or any part of any railroad or system of transportation." About July 1, the President exercised this power and relinquished a large number of the shorter lines, retaining, as already suggested, something like 230,000 miles which had been from the 1st day of January, 1918, and still are being operated by the Director General of Railroads.

The Federal Control Act empowered the President to agree with each carrier, whose property was taken over, for the payment of a maximum compensation equivalent to its average annual railway operating income for the three years ending June 30, 1917. Upon this basis the aggregate annual compensation for the use of the railways passing into the hands of the Government and retained until the present time is, in round numbers, $900,000,000.

* * * * *

According to the estimate of the Railroad Administration, the net operating income of the systems in the hands of the Government for the two years 1918 and 1919, will be $551,777,459 less than the compensation to which the carriers are entitled, computed as provided by law and prescribed in the standard contract; that is to say, when all accounts have been adjusted and paid the Government will have lost that amount in its two years of operation. It is the opinion of the committee, without reflecting in any wise upon the Railroad Administration, that in the end the loss will be found to be much greater than the estimate submitted; but however, that may be, it must ultimately be paid for by the Treasury of the United States.

Published as a part of the report is a communication under date of October 22, 1919, addressed to Senator Cum-

mins, from the Director, Division of Finance, U. S. Railroad Administration, where it is stated: (Page 5)

When the Railroad Administration shall have made settlement with the railroad companies in accordance with the foregoing the situation will be as follows: The Railroad Administration will have expended and there will, in consequence, have been correspondingly consumed or tied up.

1. Amount necessary to defray operating deficit, the difference between the standard rental payable to the railroad companies and the estimated net operating income for the 24 months ended Dec. 31, 1919, $551,777,459.

In the Minority Report (Report 304, Part 2) by Senator LaFollette, from the Senate Committee on Interstate Commerce, to accompany S. 3288, it is stated: (Pages 6, 11, 12).

There is no longer a loss chargeable against the Government in operating the railroads as we slowly approach more settled business conditions. The monthly deficit, which has been the object of so much adverse criticism against Government operation, has wholly disappeared, and in its place appears a net monthly profit of millions of dollars.

* * * * *

I direct attention to the following statement showing net gain or loss to the Government from the operation of the railroads for the months from May to September, inclusive, 1919.

* * * * *

Net gain or loss to the Government after allowing for one-twelfth of the annual rental.

| *Month* | *Net Gain* | *Net Loss* |
|---|---|---|
| May | | $37,642,128 |
| June | | 26,031,860 |
| July | | 2,031,547 |
| August | $12,397,112 | |
| September | 19,000,000 | |

* * * *

The most remarkable of all arguments advanced in favor of this bill and against continued Government operation is that the latter is too expensive.

* * * *

In the report of the majority of the committee, at page 3, it is said that the Government will lose as a result of operating the railroads for the years 1918 and 1919 about $550,000,000. Nothing, in my opinion, could be further from the fact. It is true that the Government will pay the railroad companies for the use of railway property for the years 1918 and 1919 about $550,000,000 more than it will receive *net* as operating income.

* * * *

If the figures referred to in the majority report are correct, and it will cost the Government $550,000,000 for this service more than it received *net* in the way of operating income from the roads, it is the best investment of that amount of money which the Government made during the war, and it is utterly fallacious to speak of it is a loss.

Mr. Esch, as Chairman of the House Committee on Interstate and Foreign Commerce, in an address delivered December 13, 1920, which was incoporated in the Congressional Record in the extended remarks of the Hon. Samuel E. Winslow (Vol. 60, Part 5, p. 4569), in a paragraph succinctly stated the extent of the study and consideration given by Congress to the framing of the Transportation Act of 1920. He said: (p. 4570)

Perhaps to no Congress has a more difficult, complicated, or important piece of legslation ever been submitted. Its consideration extended over a period of many months, hundreds of witnesses were heard, and thousands of pages of testimony and exhibits were presented. After four months devoted to hearings and consideration of numerous plans and suggested amendments, the House passed its bill November 17, 1919. The Senate passed the Cummins bill December 19. Two days later both bills were sent to conference. Owing to the wide and radical differences between the bills on highly important matters, it was impossible for the conferees to get action on a conference report by January 1, 1920, the date fixed originally by the President for the return of the roads. The President, therefore, changed the date to March 1, 1920. After eight weeks of continuous and strenuous effort, the conferees reported and the bill was approved February 28.

The Joint Resolution adopted by the 65th Congress respecting short line railroads relinquishment from Federal control was vetoed by the President July 11, 1918.

The action taken by the Senate and House with respect to the adoption of this resolution was as follows:

The Senate: (Vol. 56, Part 9, p. 8496).

Mr. Smith of South Carolina: I ask the Senator from Virginia if he will not yield to me for the purpose of calling up Senate joint resolution 159?

Mr. Martin: I am willing to yield to the Senator to get that measure before the Senate on the same condition that I yielded for the appropriation bill, without the resolution losing its place.

* * * * *

Mr. Smith of South Carolina: The object is this: The Senator from Iowa (Mr. Cummins) introduced an amendment when the bill was on its passage to the

effect that all lines connecting or competing with a line or system taken over by the Government should be considered under Government control as long as the line with which it connected or competed was under Government control. The interpretation of that by the administration under section 14 of the railroad law was that any or all parts of a given railroad could be relinquished without respect to that amendment of the Senator from Iowa. So, the effect of the situation would be this, that under the present interpretation of the act any short line railroad could be relinquished at their will, and as we have already closed the money market by an act of Congress and given them the power to route freight wherever they see fit to carry it, it simply amounts to this, that a short line which was relinquished would be left absolutely helpless, whether it was to live or not. That is the situation.

Mr. Penrose: What does the joint resolution do?

Mr. Smith of South Carolina: It makes it obligatory upon them to hold these short lines as long as they connect and compete with lines taken over.

Mr. Penrose: In the opinion of the Senator from South Carolina, the chairman of the Committee on Interstate Commerce, does this measure meet the complaint of the owners of the short line roads?

Mr. Smith of South Carolina: Absolutely.

Mr. Penrose: In the case of the short line railroads which have not already been taken over, what would happen to them?

Mr. Smith of South Carolina: This will apply to them.

Mr. Penrose: The Government will be compelled to take them over also.

Mr. Smith of Carolina: It will be compelled to take them over also.

Mr. Penrose: I am glad that the committee has done that.

* * * * *

Mr. Hardwick: Mr. President, I merely want to say that I am heartily in favor of the proposal submitted by the Senator from South Carolina in behalf of the Committee on Interstate Commerce. In my judgment, it would not have been necessary to submit this proposition if any reasonable and fair construction had been given to the legislation and to the effect that Congress intended to give to the law.

I am also very heartily in favor for exactly the same reason of the amendment proposed by the Senator from Iowa.

* * * * *

The House: (Id. pp. 8535-6).

Mr. Sims: Mr. Speaker, I ask unanimous consent to take from the Speaker's table Senate joint resolution 159 with reference to short line railroads and pass the same. It is exactly what the House has already passed with a little addition at the end with reference to interurban railroads to which there is no objection.

* * * * *

The Speaker: The Clerk will report the Senate Joint Resolution.

The Clerk read as follows:

*Resolved, etc.,* That the time within which the President may relinquish control of all or any part of any railroad or system of transporttion, further Federal control of which the President shall deem not needful or desirable, as provided in section 14 of said act, be, and it is hereby, extended to and including January 1, 1919; *Provided, however,* that the right conferred upon the President to relinquish prior to July 1, 1918, control of all or any part of any railroad or system of

transportation without consent of the carrier as provided in section 14 of an act approved March 21, 1918, entitled, "An act to provide for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes," which right is herein extended to and inclusive of January 1, 1919, shall not be construed to include any railroad engaged as a common carrier in general transportation such as mentioned in section 1 of said act not owned, controlled or operated by another carrier company and which has heretofore competed for traffic with any railroad or railroads of which the President has taken and retained possession, use, and control; it being the intent of Congress that every railroad not owned, controlled, or operated by another carrier company and which has heretofore competed for traffic with a railroad or railroads which the President has taken and retains the possession, use or control or which connects with such railroads and is engaged as a common carrier in general transportation shall be held and considered as within Federal control as defined in said act and to be entitled to the benefits of all the provisions of said act so long as the railroad or railroads with which it has heretofore competed for traffic or with which it connects shall be retained under Federal control; *Provided further*, That nothing in this resolution or in the said act of March 21, 1918, shall be construed as requiring the President to take or retain the possession, use and control of any street railway, whether the same be owned, controlled or operated by another carrier company or not, nor to require the President to take or retain the possession, use and control of any interurban or similar railroad which does not receive at least 25 per cent of its operating revenue from the transportation of freight, and which prior to December 29,

1917, did not have through routes or joint rates with one or more steam-road carriers."

The Speaker: The question is on the third reading of the Senate joint resolution.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed.

On motion of Mr. Sims, a motion to consider the vote by which the Joint Resolution was passed was laid on the table.

66th Congress) (Report
1st Session ) (No.456

## HOUSE OF REPRESENTATIVES
## RETURN OF RAILROADS TO PRIVATE OWNERSHIP.

November 10, 1919.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mr. Esch, from the Committee on Interstate and Foreign Commerce, submitted the following:

### REPORT (In Part)

(To accompany H. R. 10453)

The Committee on Interstate and Foreign Commerce, to whom was referred the bill H. R. 10453 to provide for the termination of Federal control of railroads and systems of transportation; to provide for the settlement of disputes between the carriers and their employees; to further amend the act entitled, "An Act to regulate commerce," approved February 4, 1887, as amended, and for other purposes, having considered the same report thereon with the recommendation that it pass.

*Work of the Committee.*

H. R. 4378, introduced June 2, 1919, constituted the basis for the hearings held by the committee.

* * * * *

*The Pending Bill.*

The policy pursued by the committee in framing the pending bill was not to adopt new and untried plans, but rather to build on a structure already in existence, whose foundations were well laid. In the period of reconstruction when conditions are still unsettled and the public mind is in more or less of ferment resulting from the World War, it was thought wise not to make experiments with the largest single industry in the United States, outside of agriculture, but what the committee sought to do in the bill now presented, was to provide for an adjustment of financial relations between the carriers and the Government arising out of Federal control and to provide, during the brief period of reconstruction, for financial support and for temporary relief in the way of loans, as might be asked for by the weaker roads.

* * * * *

*Guaranty to Railroads After Termination of Federal Control.*

Section 207 provides that during the six months following the termination of Federal control the United States guarantees to each railroad at any time under Federal control that its railway operating income for such guaranty period as a whole shall not be less than the average of its railway operating income for the three corresponding periods of six months each during the three years' test period ending June 30, 1917. If the road was not meeting expenses during the test period the guaranty is of the amount by which the deficit for the guaranty period exceeds the average deficit for the three corresponding periods during the test period.

# ACTION TAKEN REGARDING FEDERAL CONTROL ACT.

## CALENDAR NO. 225

## SENATE

65th Congress) (Rept. 246
2d Session ) ( Part 1.

# FEDERAL CONTROL OF TRANSPORTATION SYSTEMS DURING THE WAR.

February 7, 1918—Ordered to be printed.

Mr. Smith, of South Carolina, from the Committee on Interstate Commerce, submitted the following:

## REPORT (In Part)

(To accompany S. 3752)

The Committee on Interstate Commerce, to whom was referred the bill (S. 3752) to provide for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes, have considered the same and report thereon with the recommendation that the bill do pass without amendment.

On August 29, 1916, Congress enacted the following: The President in time of war is empowered through the Secretary of War to take possession and assume control of any system or systems of transportation or any part thereof, and to utilize the same to the exclusion, as far as may necessary, of all other traffic thereon for the transfer or transportation of troops, war material, and equipment, or for such other purposes connected with the emergency as may be needful or desirable.

Under this statute and by virtue of all other power enabling him, the President, on December 28, 1917, took possession and control of the railroad systems of con-

tinental United States and the owned or controlled systems of coastwise or inland water transportation. He appointed Hon. William G. McAdoo, Director General of Railroads.

Since December 28, he has been operating those systems of transportation for war and national purposes. There was no provision in the act of August 29, 1916, for determining the just compensation due as a constitutional right to the owners of the properties thus taken over for public purposes. It therefore became necessary to provide the proper legislation to meet the two very important needs; first, the proper judicial machinery for determining the amount of just compensation thus accruing; secondly, to give to the President the authority to offer the owners of the property thus taken just and reasonable terms for compensation which, if accepted, will determine finally and completely all rights as between the Government and the owners, thus avoiding the delays incident to litigation and giving strength and stability to the security market and rendering assistance to our future war financing.

The President, in his proclamation, instructed the Director General to—

enter upon negotiations with the several companies looking to an agreement for just and reasonable compensation for the possession, use, and control of their respective properties on the basis of an annual guaranteed compensation above accruing depreciation and the maintenance of their properties, equivalent, as nearly as may be, to the average of the net railway operating income thereof for the three-year period ending June 30, 1917.

You committee were of opinion that this is the time for war emergency legislation and not the time to settle the many controversial and vexed questions concerning

our future transportation policy.

With these preliminary observations your committee submits a brief explanation of the various sections of the bill:

Section 1.

Section 1 authorizes the President to agree with the carriers whose property has been taken over that during the period of Federal control each carrier may receive as just compensation—in lieu of all rights arising under due process of law—an annual sum not exceeding its average annual railway operating income for the three years ended June 30, 1917, plus a return at a rate to be fixed by the President upon the cost of additional facilities made during the last six months of 1917, the amount of such net earnings and the cost of such additional facilities to be determined by the Interstate Commerce Commission and certified to the President. This is in substance the President's suggestion. The certification of the commission is to be taken as conclusive for the purpose of such agreement. Any operating income in excess of such standard return is to be paid into the Treasury of the United States and placed in the revolving fund provided by section 6 of this act.

About 75 great operating railroads do over 90 per cent of the railroad business. It is believed by your committee that most of these great railroad carriers will accept these terms as a just and fair measure of their constitutional rights. Section 1 further provides that ordinary taxes, National and State, shall as now, be paid out of operating revenue; but war taxes accruing under the act of October 3, 1917, are to be paid by the companies out of their own funds, or charged against the standard return. In other words, the holders of railroad securities are by section 1 (like holders of other securities) to bear their own just portion of the war

burden. Section 1 also requires that each agreement shall contain adequate and appropriate provisions for the maintenance and depreciation of the property and the creation of any reserves or reserve funds found necessary in connection therewith; so that the properties may at the end of Federal control be returned to the owners in a condition substantially equivalent to their condition when taken over by the Government and that proper adjustments both in the standard return and in the terms of final settlement may be made. Thus even-handed justice will be worked out as between each company and the Federal Government.

If the rights of all the railroads making returns to the Interstate Commerce Commission are fixed under the provisions of this section, the Government will guarantee approximately $945,000,000 a year.

Since the preparation of this summary, however, the committee has amended Section 1 by inserting a provision authorizing a return, at such reasonable rate as the President may determine upon the cost of additional transportation facilities made during the last six months of 1917. This addition, of perhaps ten to fifteen millions, is made in the interest of equality, it appearing that two hundred to two hundred and fifty millions of additional capital has during the last half of 1917 been put into transportation facilities by a comparatively few of the carriers taken under Federal control.

There has, of course, been much discussion as to the fairness and justice of the proposed amount of the standard return. It should not be overlooked that the gist of the question is, what would these companies be likely to receive from the courts as just compensation? The amount of just compensation is not a legislative question—it is a judicial question. (Monongahela Navigation Co. v. U. S., 148 U. S., 312.) It follows, in the

opinion of your committee, that much of the evidence and discussion concerning the so-called surplus is irrelevant. It is plainly in the public interest—and indeed a war need—that the President be authorized to offer to settle with the owners of these properties on a basis apprxoimately equivalent to that which sound-thinking men would advise the owners they would be likely to receive by court decision. The rights of such owners must be tested by present conditions—not by some theory of capitalization never made operative under Federal or State law or generally followed by the courts.

Questions of value are always difficult questions. It is highly probable, if not certain, if the whole question were remitted to the courts, they would take as the basis for determining just compensation, the actual net earnings for a reasonable period. During the last three years new investment in the properties now under Federal control has been at the rate of approximately three hundred and seventy-five millions a year. The year ended June 30, 1915, was one of the poorest in recent railroad history. The other two years have been prosperous years. The average of the three years therefore reflects neither poverty nor riches. The purchasing power of the dollar accruing to the stockholder, as well as to the wage earner, has decreased. Dividends in industrial companies have largely increased. The rate of return upon Government bonds, both abroad and in the United States, has largely increased.

The percentage of return upon the value of the railroad property taken under Federal control cannot be accurately stated; for until the Federal valuation, now in process, is completed, no one knows the value of that property. The book value may be taken for certain comparative purposes, as of some significance; it must not be regarded as accurate. The proposed standard re-

turn, figured upon the book value of all the companies will give a return not far from 5.32 per cent. Comparing this return to that which accrues to the purchaser of Government bonds, it seems large; but Government bonds run for a period of 25 or 30 years. The proposed guarantee to the owners of railroad securities may run for only a few months. The government is practically a tenant at will.

After the most careful consideration your committee are of the opinion that the owners of these properties would not be unlikely to receive an award from a court at least equal to the proposed offer; that it is therefore the duty of Congress to authorize the President to make such offers as will prevent patriotic and fair-minded American citizens from resorting to litigations, in time of war, in order to determine their rights against their government.